

10-0740-cv

IN THE
United States Court of Appeals
FOR THE SECOND CIRCUIT

EDWARD CARTER, FRANK FIORILLO, KEVIN LAMM,
JOSEPH NOFI, THOMAS SNYDER,
Plaintiffs-Appellants,

v.

INCORPORATED VILLAGE OF OCEAN BEACH, JOSEPH C. LOEFFLER, JR., MAYOR,
individually and in his official capacity, NATALIE K. ROGERS, FORMER MAYOR,
individually and in her official capacity, OCEAN BEACH POLICE DEPARTMENT,
GEORGE B. HESSE, Acting Deputy Police Chief, individually and in his official
capacity, SUFFOLK COUNTY, SUFFOLK COUNTY POLICE DEPARTMENT,
SUFFOLK COUNTY DEPARTMENT OF CIVIL SERVICE,
ALISON SANCHEZ, individually and in her official capacity,
Defendants-Appellees,

SUFFOLK COUNTY DISTRICT ATTORNEY'S OFFICE,
Defendant.

*On Appeal from the United States District Court
for the Eastern District of New York (Central Islip)*

**JOINT APPENDIX
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Pages A3325 to A3730**

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

EDWARD CARTER, FRANK FIORILLO,)
KEVIN LAMM, JOSEPH NOFI, and)
THOMAS SNYDER,)
)
Plaintiffs,)
)
vs.) CV 07 1215
)
INCORPORATED VILLAGE OF OCEAN)
BEACH; MAYOR JOSEPH C. LOEFFLER)
JR., individually and in his)
Official capacity; former mayor)
NATALIE K. ROGERS, individually)
and in her official capacity,)
OCEAN BEACH POLICE DEPARTMENT;)
ACTING DEPUTY POLICE CHIEF)
GEORGE B. HESSE, individually)
And in his official capacity;)
SUFFOLK COUNTY; SUFFOLK COUNTY)
POLICE DEPARTMENT, SUFFOLK)
COUNTY DEPARTMENT OF CIVIL)
SERVICE; and ALLISON SANCHEZ,)
Individually and in her)
Official capacity,)
)
Defendants.)
-----)

VIDEOTAPED DEPOSITION OF PATRICK JOHN CHERRY

New York, New York

Tuesday, November 18, 2008

Reported by:
Philip Rizzuti
JOB NO. 18815

Page 2	Page 4
<p>1 2 3 4 November 18, 2008 5 9:37 a.m. 6 7 Videotaped deposition of PATRICK 8 JOHN CHERRY, held at the offices of 9 Thompson Wigdor & Gilly, 85 Fifth 10 Avenue, New York, New York, pursuant to 11 subpoena, before Philip Rizzuti, a 12 Notary Public of the State of New York 13 14 15 16 17 18 19 20 21 22 23 24 25</p>	<p>1 2 APPEARANCES: 3 4 ALSO PRESENT: 5 THOMAS SNYDER 6 FRANK FIORILLO 7 JOSH LIPSON, Videographer 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>
Page 3	Page 5
<p>1 2 APPEARANCES: 3 4 THOMPSON WIGDOR & GILLY, LLP 5 Attorneys for Plaintiffs 6 85 Fifth Avenue 7 New York, New York 10003 8 BY: ANDREW S. GOODSTADT, ESQ. 9 10 MARKS, O'NEILL, O'BRIEN & COURTNEY, P.C. 11 Attorneys for George B. Hesse 12 530 Saw Mill Road 13 Elmsford, New York 10523 14 BY: KEVIN W. CONNOLLY, ESQ. 15 16 RIVKIN RADLER, LLP 17 Attorneys for Incorporated Village of 18 Ocean Beach, Joseph Loeffler, Natalie 19 Rogers and Ocean Beach Police Department 20 926 RexCorp Plaza 21 Uniondale, New York 11556-0926 22 BY: KENNETH A. NOVIKOFF, ESQ. 23 24 25</p>	<p>1 2 IT IS HEREBY STIPULATED AND AGREED, 3 by and between counsel for the respective 4 parties hereto, that the filing, sealing and 5 certification of the within deposition shall 6 be and the same are hereby waived; 7 IT IS FURTHER STIPULATED AND AGREED 8 that all objections, except as to the form 9 of the question, shall be reserved to the 10 time of the trial; 11 IT IS FURTHER STIPULATED AND AGREED 12 that the within deposition may be signed 13 before any Notary Public with the same force 14 and effect as if signed and sworn to before 15 the Court. 16 17 18 19 20 21 22 23 24 25</p>

<p style="text-align: right;">Page 6</p> <p>1 Cherry</p> <p>2 THE VIDEOGRAPHER: This is the the</p> <p>3 start of tape number 1 of the videotape</p> <p>4 deposition of Patrick Cherry in the</p> <p>5 matter of Carter versus Incorporated</p> <p>6 Village of Ocean Beach. Today's date is</p> <p>7 November 18, 2008 at approximately 9:37</p> <p>8 a.m.</p> <p>9 Will the court reporter please</p> <p>10 swear in the witness.</p> <p>11 PATRICK JOHN CHERRY,</p> <p>12 called as a witness, having been duly</p> <p>13 sworn by a Notary Public, was examined</p> <p>14 and testified as follows:</p> <p>15 EXAMINATION BY</p> <p>16 MR. GOODSTADT:</p> <p>17 MR. NOVIKOFF: Same stips as in</p> <p>18 the other depositions?</p> <p>19 MR. GOODSTADT: Yes. Federal</p> <p>20 rules and local civil rules govern.</p> <p>21 MR. NOVIKOFF: Yes.</p> <p>22 Q. Good morning, Mr. Cherry.</p> <p>23 A. Good morning.</p> <p>24 Q. My name is Andrew Goodstadt, I am</p> <p>25 an attorney at the law firm of Thompson Wigdor</p>	<p style="text-align: right;">Page 8</p> <p>1 Cherry</p> <p>2 who gave it to me later on in the evening.</p> <p>3 MR. NOVIKOFF: That is a yes or no</p> <p>4 question.</p> <p>5 Q. If you look up in the top left</p> <p>6 where it says to, you see that under the</p> <p>7 caption?</p> <p>8 A. Yes, sir.</p> <p>9 Q. And it says to Patrick Cherry, 4</p> <p>10 Grand Avenue, Bay Shore, New York, do you see</p> <p>11 that?</p> <p>12 A. Yes, I do.</p> <p>13 Q. And is that your address?</p> <p>14 A. The address is incorrect.</p> <p>15 Q. Incorrect?</p> <p>16 A. It should be 4 Gerard Avenue.</p> <p>17 Q. I apologize for getting that</p> <p>18 wrong, but nevertheless it was delivered to</p> <p>19 your home?</p> <p>20 A. Yes.</p> <p>21 Q. And in or about August of 2008</p> <p>22 when you received this subpoena for your</p> <p>23 deposition were you working at Ocean Beach at</p> <p>24 the time?</p> <p>25 A. Yes.</p>
<p style="text-align: right;">Page 7</p> <p>1 Cherry</p> <p>2 & Gilly, and my law firm represents the five</p> <p>3 plaintiffs in this matter against the Village</p> <p>4 of Ocean Beach and others. Thank you for</p> <p>5 coming this morning.</p> <p>6 I ask if you could mark this</p> <p>7 Cherry Exhibit 1, please, subpoena.</p> <p>8 (Cherry Exhibit 1, subpoena,</p> <p>9 marked for identification, as of this</p> <p>10 date.)</p> <p>11 Q. I have placed in front of</p> <p>12 Mr. Cherry what has now been marked as Cherry</p> <p>13 1. It is a two-page exhibit and it is a</p> <p>14 subpoena that is signed by me dated August 14,</p> <p>15 2008.</p> <p>16 Mr. Cherry, do you recognize the</p> <p>17 document that has been marked as Cherry</p> <p>18 Exhibit 1?</p> <p>19 A. Yes, I do.</p> <p>20 Q. What is this document?</p> <p>21 A. It is a subpoena to appear here</p> <p>22 for -- to give testimony.</p> <p>23 Q. Do you recall receiving the</p> <p>24 subpoena in or around August of 2008?</p> <p>25 A. Yes. It was delivered to my wife</p>	<p style="text-align: right;">Page 9</p> <p>1 Cherry</p> <p>2 Q. What was your title at that time?</p> <p>3 A. Dispatcher.</p> <p>4 Q. And in or around August of 2008</p> <p>5 were you a -- was that your position</p> <p>6 full-time?</p> <p>7 A. I was seasonal.</p> <p>8 Q. Seasonal?</p> <p>9 A. Yes.</p> <p>10 Q. What do you mean by seasonal?</p> <p>11 A. I worked from two weeks before</p> <p>12 Memorial Day to two weeks after Labor Day.</p> <p>13 Q. So now that we are beyond two</p> <p>14 weeks after Labor Day of 2008 are you</p> <p>15 currently working at Ocean Beach?</p> <p>16 A. No.</p> <p>17 Q. So you are not employed by Ocean</p> <p>18 Beach right now?</p> <p>19 A. I am employed -- I am still</p> <p>20 employed, I am what they classified as on</p> <p>21 call, that means if they call me I go into</p> <p>22 work.</p> <p>23 Q. When you say they classify you,</p> <p>24 who are you referring to?</p> <p>25 A. The Village.</p>

<p style="text-align: right;">Page 10</p> <p>1 Cherry</p> <p>2 Q. The Village classifies as you on</p> <p>3 call?</p> <p>4 A. Yes.</p> <p>5 Q. Do you know whether that is a</p> <p>6 civil service title?</p> <p>7 A. I believe it is.</p> <p>8 Q. And what is that exact title?</p> <p>9 A. On call status.</p> <p>10 Q. On call dispatcher or just on call</p> <p>11 status?</p> <p>12 MR. NOVIKOFF: Objection. You can</p> <p>13 answer. Just so you know unless I</p> <p>14 instruct you not to answer a question you</p> <p>15 are to answer every question regardless</p> <p>16 of whether I object or not.</p> <p>17 A. Okay. On call I believe is if</p> <p>18 they call me in to go to work, I could go to</p> <p>19 work.</p> <p>20 Q. And I believe the question was</p> <p>21 whether the title is on call status or on call</p> <p>22 dispatcher?</p> <p>23 A. On call dispatcher.</p> <p>24 Q. Just so I am clear, it is your</p> <p>25 understanding that that is a civil service</p>	<p style="text-align: right;">Page 12</p> <p>1 Cherry</p> <p>2 that?</p> <p>3 A. Yes.</p> <p>4 Q. And in the section that asked why</p> <p>5 you are no longer employed or what the reason</p> <p>6 was that you left Ocean Beach in those forms,</p> <p>7 do you recall what box you checked off?</p> <p>8 A. Lack of work.</p> <p>9 Q. Did you alert the unemployment</p> <p>10 insurance board that you were on on call</p> <p>11 status?</p> <p>12 A. Yes, I did.</p> <p>13 Q. How long have you lived at 4</p> <p>14 Gerard?</p> <p>15 A. Gerard.</p> <p>16 Q. How long have you lived at 4</p> <p>17 Gerard Avenue?</p> <p>18 A. Since 1976.</p> <p>19 Q. Since 1976 have you used any other</p> <p>20 address as your home address?</p> <p>21 A. No.</p> <p>22 Q. Have you ever used any address in</p> <p>23 the Village of Ocean Beach as your home</p> <p>24 address?</p> <p>25 A. No.</p>
<p style="text-align: right;">Page 11</p> <p>1 Cherry</p> <p>2 title, on call dispatcher?</p> <p>3 MR. NOVIKOFF: Objection.</p> <p>4 A. I believe so.</p> <p>5 Q. Since after two weeks -- since the</p> <p>6 period that ended the season in '08, which I</p> <p>7 believe you testified was two weeks after</p> <p>8 Labor Day; is that correct?</p> <p>9 A. It may have been two and a half,</p> <p>10 three weeks.</p> <p>11 Q. So now I am talking about the</p> <p>12 period between the end of the season for '08</p> <p>13 and today how many shifts have you worked?</p> <p>14 A. None.</p> <p>15 Q. So you have not been called at</p> <p>16 all?</p> <p>17 A. No.</p> <p>18 Q. Have you been paid at all from</p> <p>19 Ocean Beach between -- I am talking about the</p> <p>20 period the end of the season '08 until today?</p> <p>21 A. No.</p> <p>22 Q. Are you receiving unemployment</p> <p>23 insurance benefits currently?</p> <p>24 A. Yes.</p> <p>25 Q. Did you file forms to receive</p>	<p style="text-align: right;">Page 13</p> <p>1 Cherry</p> <p>2 Q. Have you ever testified under oath</p> <p>3 before?</p> <p>4 A. Yes.</p> <p>5 Q. Have you ever testified under oath</p> <p>6 in a civil proceeding?</p> <p>7 A. No.</p> <p>8 Q. So this is your first time?</p> <p>9 A. Yes.</p> <p>10 Q. Never testified in a deposition</p> <p>11 before?</p> <p>12 A. No.</p> <p>13 Q. Since this is your first time I</p> <p>14 want to go over a few ground rules so we are</p> <p>15 on the same page today, is that fair?</p> <p>16 A. Yes.</p> <p>17 Q. You understand that you are</p> <p>18 testifying under oath, you are sworn to tell</p> <p>19 the truth?</p> <p>20 A. Yes.</p> <p>21 Q. That if you fail to tell the truth</p> <p>22 it potentially is punishable as a criminal</p> <p>23 offense, do you understand that?</p> <p>24 MR. NOVIKOFF: Objection.</p> <p>25 A. Yes.</p>

<p style="text-align: right;">Page 14</p> <p>1 Cherry</p> <p>2 Q. It is important that you give</p> <p>3 verbal answers because as you can see there is</p> <p>4 a court reporter sitting next to both of us</p> <p>5 and he needs to take down a record and he</p> <p>6 doesn't -- it is not good if he records your</p> <p>7 answer as a nod of the head or shake of the</p> <p>8 head.</p> <p>9 A. Yes.</p> <p>10 Q. Do you understand that?</p> <p>11 A. Yes.</p> <p>12 Q. If you don't hear or understand a</p> <p>13 question that I ask just ask me to repeat or</p> <p>14 rephrase it, I will be happy to do so, okay?</p> <p>15 A. Yes.</p> <p>16 Q. And if you don't hear or</p> <p>17 understand a phrase or word that I use, again</p> <p>18 let me know, I will be happy to repeat or</p> <p>19 rephrase it?</p> <p>20 A. Yes.</p> <p>21 Q. When you answer a question I am</p> <p>22 going to assume that you both heard the</p> <p>23 question and that you understood it, okay?</p> <p>24 A. Yes.</p> <p>25 Q. If at any point in time you want</p>	<p style="text-align: right;">Page 16</p> <p>1 Cherry</p> <p>2 medications that you believe would impair your</p> <p>3 ability to testify today?</p> <p>4 A. No.</p> <p>5 Q. Have you consumed any controlled</p> <p>6 substance, drugs or narcotics in the last 72</p> <p>7 hours?</p> <p>8 A. No.</p> <p>9 Q. Have you consumed any alcoholic</p> <p>10 beverages in the last 72 hours?</p> <p>11 A. Yes, I had a small glass of sherry</p> <p>12 last night.</p> <p>13 MR. NOVIKOFF: Yes or no.</p> <p>14 Q. Is there anything about your</p> <p>15 consumption of that glass of sherry that would</p> <p>16 impair your ability to testify today?</p> <p>17 A. No.</p> <p>18 Q. Great. Is there any reason that</p> <p>19 you can think of that would possibly impair</p> <p>20 your ability to testify fully and truthfully</p> <p>21 today?</p> <p>22 A. No.</p> <p>23 Q. And you are represented by an</p> <p>24 attorney in connection with this deposition?</p> <p>25 A. Yes.</p>
<p style="text-align: right;">Page 15</p> <p>1 Cherry</p> <p>2 to correct an answer in this deposition feel</p> <p>3 free to do so, okay?</p> <p>4 A. Yes.</p> <p>5 MR. NOVIKOFF: Note my objection.</p> <p>6 We know what he is entitled to do at the</p> <p>7 conclusion of the deposition.</p> <p>8 Q. Again the fact that there is a</p> <p>9 court reporter here it is important that you</p> <p>10 let me finish my questions, the same way that</p> <p>11 it is important that I let you finish your</p> <p>12 answer so we get a clear transcript, okay?</p> <p>13 A. Yes.</p> <p>14 Q. If at any point in time you need</p> <p>15 to the take a break or recess, just let me</p> <p>16 know, okay?</p> <p>17 A. Yes.</p> <p>18 Q. The only thing that I ask is if</p> <p>19 there is a question pending, that unless there</p> <p>20 is an issue between you and counsel with</p> <p>21 respect to privilege, that you answer the</p> <p>22 question and then we take our break, is that</p> <p>23 fair?</p> <p>24 A. Yes.</p> <p>25 Q. Are you presently taking any</p>	<p style="text-align: right;">Page 17</p> <p>1 Cherry</p> <p>2 Q. Who is that?</p> <p>3 A. Rivkin Radler, Mr. Novikoff.</p> <p>4 Q. And Mr. Novikoff is sitting right</p> <p>5 next to you; correct?</p> <p>6 A. Yes.</p> <p>7 Q. When did you first learn that the</p> <p>8 plaintiffs in this matter were making</p> <p>9 allegations against Ocean Beach and others?</p> <p>10 MR. NOVIKOFF: Objection.</p> <p>11 A. I believe it was in the papers.</p> <p>12 Q. That was the first time that you</p> <p>13 heard about the fact that the plaintiffs were</p> <p>14 making some allegations in this case?</p> <p>15 A. Yes.</p> <p>16 MR. NOVIKOFF: Note my objection.</p> <p>17 Q. What is your understanding of the</p> <p>18 allegations that are being made in this case?</p> <p>19 A. I believe that they were let go</p> <p>20 unfairly, that they had certain allegations of</p> <p>21 wrongdoing in Ocean Beach.</p> <p>22 Q. Anything else?</p> <p>23 A. That is as far as I know.</p> <p>24 Q. What is your understanding of the</p> <p>25 allegations that are being made of wrongdoing?</p>

<p style="text-align: right;">Page 18</p> <p>1 Cherry</p> <p>2 A. I believe it was drinking on duty.</p> <p>3 Having sex on duty by certain members. There</p> <p>4 was allegation that there was a cover-up of a</p> <p>5 brutality incident.</p> <p>6 Q. Any others?</p> <p>7 A. Uncertified officers working on</p> <p>8 the beach, on Ocean Beach.</p> <p>9 Q. Anything else?</p> <p>10 A. That is I guess about it. As far</p> <p>11 as I know.</p> <p>12 Q. We will get into some detail on</p> <p>13 those allegations a little bit later. What is</p> <p>14 your understanding of the allegation that they</p> <p>15 were let go unfairly?</p> <p>16 A. I don't know what their rationale</p> <p>17 was other than they felt that they were let go</p> <p>18 unfairly.</p> <p>19 Q. Have you read a copy of the</p> <p>20 complaint in this matter?</p> <p>21 A. Part of it, not all of it.</p> <p>22 Q. When did you read that complaint?</p> <p>23 A. Pardon me?</p> <p>24 Q. When did you read those parts of</p> <p>25 the complaint?</p>	<p style="text-align: right;">Page 20</p> <p>1 Cherry</p> <p>2 given a title of chief to your understanding?</p> <p>3 A. No. Chief is deputy chief I</p> <p>4 believe, but we call deputy chief chiefs, that</p> <p>5 is what we call them.</p> <p>6 MR. NOVIKOFF: Just answer the</p> <p>7 question.</p> <p>8 Q. Do you know whether Mr. Hesse or</p> <p>9 Deputy Chief Hesse ever passed the civil</p> <p>10 service test required to achieve the position</p> <p>11 of deputy chief?</p> <p>12 A. No.</p> <p>13 Q. You don't know or he didn't pass?</p> <p>14 MR. NOVIKOFF: The question was do</p> <p>15 you know. So the answer is no.</p> <p>16 A. That is correct.</p> <p>17 Q. So you don't know one way or the</p> <p>18 other?</p> <p>19 A. No.</p> <p>20 Q. Did you ever speak to Hesse about</p> <p>21 whether he passed the tests necessary to</p> <p>22 achieve the position of deputy chief?</p> <p>23 A. Yes. Well --</p> <p>24 MR. NOVIKOFF: Note my objection,</p> <p>25 you can answer.</p>
<p style="text-align: right;">Page 19</p> <p>1 Cherry</p> <p>2 A. When they got served I asked if I</p> <p>3 could read the part -- I read the part that</p> <p>4 pertains to me as far as the alleged cover-up</p> <p>5 of the police brutality during the Halloween</p> <p>6 incident.</p> <p>7 Q. When you say they got served, who</p> <p>8 are you referring to?</p> <p>9 A. The Village of Ocean Beach.</p> <p>10 Q. How did you learn that they were</p> <p>11 served?</p> <p>12 A. There was a lawsuit, I knew they</p> <p>13 got served. I asked when they get served</p> <p>14 could I read the charges.</p> <p>15 Q. Who did you ask?</p> <p>16 A. Chief Hesse.</p> <p>17 Q. You referred to Mr. Hesse as Chief</p> <p>18 Hesse, first name is George; is that correct?</p> <p>19 A. That is correct.</p> <p>20 Q. How long have you referred to him</p> <p>21 as Chief Hesse?</p> <p>22 A. He was given the title of deputy</p> <p>23 chief sometime I guess in -- probably around</p> <p>24 2006.</p> <p>25 Q. Was there a point where he was</p>	<p style="text-align: right;">Page 21</p> <p>1 Cherry</p> <p>2 A. We talked about the -- I know he</p> <p>3 was appointed deputy chief. I am not aware</p> <p>4 that he passed any test or took any tests to</p> <p>5 be deputy chief.</p> <p>6 Q. Did you ever ask him whether he</p> <p>7 passed any tests or took any tests to become</p> <p>8 deputy chief?</p> <p>9 MR. NOVIKOFF: Objection.</p> <p>10 A. No.</p> <p>11 MR. NOVIKOFF: Mr. Cherry, you</p> <p>12 need to let Mr. Goodstadt finish the</p> <p>13 question and then you can answer.</p> <p>14 Q. Do you know whether there is any</p> <p>15 test or tests that are administered by Suffolk</p> <p>16 County Civil Service that are required to be</p> <p>17 passed before becoming deputy chief of a</p> <p>18 police department?</p> <p>19 MR. NOVIKOFF: Objection.</p> <p>20 A. I know there is a civil service</p> <p>21 test for a chief for the village or town or</p> <p>22 department.</p> <p>23 Q. What was Mr. Hesse's title to your</p> <p>24 understanding directly before he was appointed</p> <p>25 deputy chief?</p>

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1 Cherry
2 MR. NOVIKOFF: Objection.
3 A. He was sergeant.
4 Q. You referred to him as Sergeant
5 Hesse?
6 A. Yes.
7 Q. Was that a title that everybody in
8 the department referred to him as?
9 MR. NOVIKOFF: Objection.
10 A. Yes.
11 Q. How about people outside the
12 department, do you know whether people outside
13 the department referred to him as Sergeant
14 Hesse?
15 MR. NOVIKOFF: Objection.
16 A. Yes.
17 Q. They did?
18 A. Yes.
19 Q. How about outside the Village of
20 Ocean Beach, do you know whether anybody
21 referred to him as Sergeant Hesse?
22 MR. NOVIKOFF: Objection.
23 A. I don't know.
24 Q. I believe that you testified that
25 you asked Sergeant Hesse or Chief Hesse for a

1 Cherry
2 Q. Do you recall when that was?
3 A. No. The exact date I don't
4 remember.
5 Q. Do you know approximately?
6 A. It was after they received it, I
7 am not sure exactly when, but it was after
8 they received a copy of the allegations. The
9 affidavit.
10 Q. Were you working on the day that
11 Mr. Hesse handed you a copy of the complaint?
12 A. Yes.
13 Q. So it was during the season that
14 you received it?
15 A. Yes.
16 Q. What was your reaction to the
17 parts of the complaint that you read?
18 A. I was dumbfounded.
19 Q. Why?
20 A. They made allegation that we
21 conspired to give false testimony as regards
22 to their Halloween incident, and the
23 investigation that Chief Hesse conducted and I
24 assisted him on.
25 Q. Just so I understand, Halloween

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1 Cherry
2 copy of the complaint when you learn that they
3 were served; is that correct?
4 A. Yes.
5 Q. He gave you a copy of the
6 complaint?
7 A. I asked to see it when it came in,
8 see what -- when he got served I asked if I
9 could look at the allegations.
10 Q. Did he give you a copy of the
11 complaint?
12 A. He gave me a copy to read, I
13 didn't keep it.
14 Q. But he, Chief Hesse is the one who
15 furnished you, actually handed you a copy of
16 it?
17 A. Yes.
18 Q. He handed you a hard copy of it?
19 A. Paper, yes.
20 Q. It was not E-mailed or faxed,
21 handed to you in a hard copy?
22 A. Yes.
23 Q. Where were you when he gave you
24 that?
25 A. In the station house.

1 Cherry
2 incident, Chief Hesse is the one who conducted
3 the investigation?
4 A. That is correct.
5 Q. And you were assisting him on it?
6 A. Yes.
7 Q. We will get to the investigation
8 later on. But did you have any special title
9 with respect to your investigation?
10 A. No.
11 Q. You don't recall ever being
12 appointed as a special investigator?
13 A. No.
14 Q. Your investigation or your role in
15 the investigation, was that part of your
16 duties as a police officer in Ocean Beach?
17 A. The sergeant asked me if I could
18 assist him and I said I would, and I assisted
19 him.
20 Q. What was your title at the time of
21 the investigation into the Halloween incident?
22 A. Police officer.
23 Q. For the Village of Ocean Beach?
24 A. That is correct.
25 Q. At the time that you received and

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1 Cherry
2 read at least parts of the complaint did you
3 speak with George Hesse about the allegations
4 that were made therein?

5 A. Other than saying, you know, gave
6 my opinion, I can understand -- that I
7 couldn't understand why they thought we
8 conducted a cover-up of the alleged brutality
9 by one of the other officers.

10 Q. Do you recall exactly what you
11 said to him?

12 A. Not the exact words, no.

13 Q. So in sum and substance you recall
14 just telling him that you don't understand why
15 there is an allegation of a cover-up?

16 A. That is correct.

17 Q. Do you recall what his response to
18 that was?

19 A. He said you are right, I don't
20 know why either.

21 Q. Again we will get into that in a
22 little bit, more detail later on.

23 At the time that you received and
24 read at least portions of the complaint did
25 you speak with any other person who was

1 Cherry
2 Loeffler about the allegations that were made
3 in the complaint?

4 A. I believe he came into the station
5 house and I mentioned it to him, again
6 expressing my disbelief in why they would
7 accuse us of doing something like that.

8 Q. When was that conversation?

9 A. It was sometime after receiving
10 the complaint, I don't know the exact date.
11 But it was during the season because I was
12 working.

13 Q. Do you recall which season it was
14 during?

15 A. I am not sure -- I guess -- I
16 don't know exactly when the complaint was
17 received so I am not quite sure that I can
18 give you a definite answer on when that was or
19 what season it was.

20 Q. Was it this past season?

21 A. I am not sure it was early this
22 season or the year before.

23 Q. Was Joe Loeffler the mayor of the
24 Village of Ocean Beach at that time?

25 A. When I spoke to him he was the

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1 Cherry
2 employed by the Village of Ocean Beach about
3 those allegations?

4 A. I may have mentioned it to one or
5 two other officers, you know, expressed my
6 disbelief about it.

7 Q. Which officers?

8 A. I don't recall. I am not sure.

9 Q. Is there anything that you can
10 think of that would refresh your recollection
11 as to who you spoke with?

12 A. No.

13 Q. Did you ever speak with Joseph
14 Loeffler?

15 A. No.

16 Q. About the allegations?

17 A. Yes, I did.

18 MR. NOVIKOFF: You have to wait
19 until Mr. Goodstadt finishes the
20 question.

21 Q. Was that about the time that you
22 received and read the complaint or some
23 subsequent time?

24 A. Sometime after that.

25 Q. When did you speak with Joe

1 Cherry
2 mayor.

3 Q. Did he come to the station
4 specifically to discuss the complaint?

5 MR. NOVIKOFF: Objection.

6 A. No.

7 MR. NOVIKOFF: Give me time to
8 object.

9 Q. How long did your conversation
10 last with Mr. Loeffler regarding the
11 allegations in the complaint?

12 A. No more than a few minutes.

13 Q. Who else was present?

14 A. I don't recall.

15 Q. Were there other officers present?

16 A. I don't believe so.

17 Q. What was your title at the time?

18 A. Dispatcher.

19 Q. What was Mr. Loeffler's reaction
20 to your statement to him?

21 MR. NOVIKOFF: Objection.

22 A. He said that is their complaint,
23 they made the allegation. He said I don't
24 believe it either. I don't remember his exact
25 words, but he said I don't believe it either,

8 (Pages 26 to 29)

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1 Cherry

2 why they would make such a complaint.

3 **Q. Did you discuss anything else with**
4 **Mr. Loeffler during that conversation?**

5 A. No.

6 **Q. Did you take any notes of the**
7 **conversation?**

8 A. No.

9 **Q. Do you know whether took any notes**
10 **of the conversation?**

11 A. No.

12 **Q. Other than for that one**
13 **conversation in the police station with Mr.**
14 **Loeffler have you discussed with him on any**
15 **other occasion the allegations that were made**
16 **in the complaint?**

17 A. Not the allegations, no.

18 **Q. How about the fact that the**
19 **plaintiffs have filed a complaint?**

20 A. No.

21 **Q. Have you discussed anything else**
22 **with respect to the complaint with Mr.**
23 **Loeffler subsequent to that one conversation**
24 **that you testified to?**

25 A. Other than that we might be called

1 Cherry

2 A. Nothing, just that we may be
3 called in to give a deposition, that was the
4 extent of it. To make us aware that we may be
5 called in.6 **Q. Again you used the word us, to**
7 **make us aware?**

8 A. Myself.

9 **Q. Where were you when this**
10 **conversation happened?**

11 A. At the station house.

12 **Q. Were you working at the time?**

13 A. Yes.

14 **Q. Did you have a response to Mr.**
15 **Loeffler when he told you that you may have to**
16 **be called in for a deposition?**17 A. Other than saying okay, I will
18 give the information, but there was no other
19 response.20 **Q. Was that discussion before or**
21 **after you received the subpoena that is marked**
22 **as Exhibit 1?**

23 A. Before.

24 **Q. You don't recall which season that**
25 **conversation happened in?**

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1 Cherry

2 in for a deposition at some point, that was
3 the extent of the conversations.4 **Q. When was that conversation?**5 A. That was again after I -- after we
6 got the complaint and there is a process going
7 along, he advised us that we might be called
8 in for a deposition.9 **Q. When you say he advised us --**

10 A. He advised me, myself.

11 **Q. Was there anybody else there when**
12 **he advised you?**

13 A. I don't know, I don't remember.

14 **Q. Do you have an approximate**
15 **timeframe of when that happened?**16 A. Sometime after we got the
17 complaint, that is all I can say, before the
18 depositions began.19 **Q. Before all the depositions began**
20 **in this case?**

21 A. Yes.

22 **Q. Other than for advising that you**
23 **may have to be called in for a deposition,**
24 **what else did Mr. Loeffler say to you during**
25 **that conversation?**

1 Cherry

2 A. No.

3 **Q. But it was during the season?**

4 A. Yes.

5 **Q. Did you work any shifts between**
6 **the end of the '07 season and the beginning of**
7 **the '08 season?**

8 A. No.

9 **Q. Have you ever spoken to Gary**
10 **Bossetti about the complaint or any of the**
11 **allegations raised in the complaint?**

12 A. Yes.

13 **Q. When did that conversation happen?**14 A. Again I said, he said the
15 complaint was made that there was a cover-up,
16 I said again just expressing my disbelief or
17 my understanding of why the complaint was
18 made.19 MR. NOVIKOFF: The question was
20 when?

21 THE WITNESS: When?

22 MR. NOVIKOFF: Yes.

23 **Q. When was that conversation?**24 A. Again after the complaint was
25 received.

1 Cherry

2 **Q. Do you recall how long after the**
3 **complaint was received that you had that**
4 **conversation?**

5 A. It was probably wasn't too long
6 after, I don't know the exact timeframe.

7 **Q. And who else was present during**
8 **that conversation?**

9 A. I don't recall, probably just me
10 and Gary.

11 **Q. Where were you located when that**
12 **conversation was happening?**

13 A. At the station.

14 **Q. That was a face-to-face**
15 **conversation?**

16 A. Pardon me?

17 **Q. A face-to-face conversation?**

18 A. Yes.

19 **Q. How long did that conversation**
20 **last?**

21 A. Again a matter of minutes.

22 **Q. Do you recall what he said about**
23 **the complaint or any of the allegations in the**
24 **complaint?**

25 A. He expressed disbelief also, that

1 Cherry

2 **Q. Did you take any notes of that**
3 **conversation?**

4 A. No.

5 **Q. Did you ever discuss the complaint**
6 **or anything, or any allegations alleged in the**
7 **complaint with Richard Bossetti?**

8 A. Again other than that -- again
9 expressing the -- my one questioning why they
10 would make such an allegation. Basically the
11 same thing.

12 MR. NOVIKOFF: Finish your answer.

13 A. Basically the same thing, we
14 just -- I didn't understand why they were
15 making that allegation. What they based it
16 on.

17 MR. NOVIKOFF: Yes or no.

18 **Q. When did that conversation with**
19 **Richard Bossetti take place?**

20 A. Again after we received the
21 complaint. I am not sure of the exact time.

22 **Q. Was it days, weeks, months, years?**

23 A. Within months probably. We worked
24 at the same time so I probably ran into him.

25 **Q. So it likely was the same season**

1 Cherry

2 was about it.

3 **Q. Did you discuss anything beyond**
4 **the cover-up?**

5 A. What do you mean by cover-up?

6 **Q. I believe you testified that --**

7 A. The alleged cover-up.

8 **Q. Yes, the alleged cover-up?**

9 A. No.

10 **Q. Did you discuss anything beyond**
11 **the alleged cover-up?**

12 A. No.

13 **Q. Did you discuss any of the**
14 **allegations of -- I believe you said**
15 **wrongdoing, you listed a bunch of them. Did**
16 **you discuss any of those allegations with Gary**
17 **Bossetti?**

18 MR. NOVIKOFF: Objection.

19 A. No.

20 **Q. Have you had any other**
21 **conversations with Gary Bossetti about the**
22 **complaint or anything in the complaint other**
23 **than the one conversation you already**
24 **testified to?**

25 A. No.

1 Cherry

2 **that the complaint was filed and served?**

3 A. Yes, after it was served.

4 **Q. So if I represent to you that that**
5 **was the 2007 season, is it your testimony that**
6 **you didn't discuss the complaint or any**
7 **allegations in the complaint with either Gary**
8 **Bossetti or Richard Bossetti during the 2008**
9 **season?**

10 MR. NOVIKOFF: Objection. You can
11 answer.

12 A. I am not sure it was the 2007
13 season. I don't believe I had any other
14 further discussions.

15 **Q. I am representing to you that the**
16 **complaint was filed and served, it would have**
17 **been the 2007 season?**

18 A. Okay.

19 **Q. Let's use that as an assumption?**

20 A. Okay.

21 **Q. Now you testified that it was**
22 **within weeks that you had these conversations.**
23 **So it was in the 2007 season; correct?**

24 A. Uh-hum.

25 **Q. My question to you is did you have**

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<p style="text-align: right;">Page 38</p> <p>1 Cherry</p> <p>2 any conversations with either Richard or Gary</p> <p>3 Bossetti during the 2008 season with respect</p> <p>4 to the complaint or any of the allegations in</p> <p>5 the complaint?</p> <p>6 A. I don't have any recollection of</p> <p>7 talking to them this past season.</p> <p>8 Q. Did you ever discuss with them</p> <p>9 that you may be called in for a deposition?</p> <p>10 A. No.</p> <p>11 Q. What was -- what did Richard</p> <p>12 Bossetti say during that conversation that you</p> <p>13 testified to?</p> <p>14 A. Again the same thing, it was -- I</p> <p>15 said I don't understand where they are</p> <p>16 getting these -- you know, what is this based</p> <p>17 on, what is the -- where do they come up with</p> <p>18 this allegation, and he agreed there is no</p> <p>19 basis for the allegations.</p> <p>20 Q. Did you recall anything else that</p> <p>21 he may have said during that conversation?</p> <p>22 A. No. As I said just basically</p> <p>23 disbelief in the allegations that were made.</p> <p>24 Q. How long did that conversation</p> <p>25 last?</p>	<p style="text-align: right;">Page 40</p> <p>1 Cherry</p> <p>2 in the case?</p> <p>3 A. Yes.</p> <p>4 Q. Who are they?</p> <p>5 A. Frank Fiorilli, Tom Snyder, Ed</p> <p>6 Carter, Mr. Nofi.</p> <p>7 Q. Joseph Nofi?</p> <p>8 A. Yes. And there is one other, Ed</p> <p>9 Carter. Is that five; that is five.</p> <p>10 Q. I think you said Mr. Carter twice?</p> <p>11 A. I can't think of who the fifth</p> <p>12 person is. Mr. Lamm.</p> <p>13 Q. That is Kevin Lamm?</p> <p>14 A. Yes.</p> <p>15 Q. Have you discussed the allegations</p> <p>16 made in the complaint or the complaint with</p> <p>17 any residents of the Village of Ocean Beach?</p> <p>18 A. No.</p> <p>19 Q. Have you discussed the complaint</p> <p>20 or any allegations of the complaint with</p> <p>21 anybody else, other than for counsel and any</p> <p>22 of the people that you have testified to thus</p> <p>23 far?</p> <p>24 A. No.</p> <p>25 Q. Mr. Cherry, do you have a son who</p>
<p style="text-align: right;">Page 39</p> <p>1 Cherry</p> <p>2 A. Matter of a couple of minutes.</p> <p>3 Two or three minutes maybe.</p> <p>4 Q. Did you take any notes of that</p> <p>5 conversation?</p> <p>6 A. No.</p> <p>7 Q. Do you know whether he did?</p> <p>8 A. No, sir.</p> <p>9 Q. Have you ever spoken with Edward</p> <p>10 Paradiso about the complaint or any of the</p> <p>11 allegations in the complaint?</p> <p>12 A. No.</p> <p>13 Q. Have you ever spoken with Natalie</p> <p>14 Rogers about the complaint or any of the</p> <p>15 allegations that were made in the complaint?</p> <p>16 A. No.</p> <p>17 Q. Did you ever speak with Tyree</p> <p>18 Bacon about the complaint or any allegations</p> <p>19 made in the complaints?</p> <p>20 A. No.</p> <p>21 Q. Have you ever spoken with any of</p> <p>22 the plaintiffs about the complaint or any of</p> <p>23 the allegations made in the complaint?</p> <p>24 A. No.</p> <p>25 Q. Do you know who the plaintiffs are</p>	<p style="text-align: right;">Page 41</p> <p>1 Cherry</p> <p>2 is either currently or was formerly employed</p> <p>3 with the Village of Ocean Beach?</p> <p>4 A. Yes.</p> <p>5 Q. What was your son's name?</p> <p>6 A. Patrick Cherry, C-H-E-R-R-Y.</p> <p>7 Q. What position was he employed --</p> <p>8 strike that.</p> <p>9 What was his position when he was</p> <p>10 employed by the Village of Ocean Beach?</p> <p>11 A. He was a dock master.</p> <p>12 Q. Was he ever a police officer?</p> <p>13 A. No.</p> <p>14 Q. Has he ever graduated the Police</p> <p>15 Academy?</p> <p>16 A. Yes. When you say --</p> <p>17 Q. A police officer within the</p> <p>18 Village of Ocean Beach?</p> <p>19 A. No.</p> <p>20 Q. Has he ever been a police officer</p> <p>21 anywhere?</p> <p>22 A. Yes.</p> <p>23 Q. Where was he a police officer?</p> <p>24 A. He is a police officer in the New</p> <p>25 York City Police department.</p>

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1 Cherry
 2 **Q. Currently?**
 3 A. Yes.
 4 **Q. Does he still work for the Village**
 5 **of Ocean Beach?**
 6 A. No.
 7 **Q. When did he stop working for the**
 8 **Village of Ocean Beach?**
 9 A. I am not sure of the exact date.
 10 **Q. Do you know what year it was?**
 11 A. No.
 12 **Q. At the time that he was working**
 13 **for the Village of Ocean Beach had he already**
 14 **graduated the Police Academy?**
 15 A. No.
 16 **Q. So he stopped working at the**
 17 **Village of Ocean Beach and then graduated the**
 18 **Police Academy?**
 19 A. Yes.
 20 **Q. Was his title at all times at**
 21 **Ocean Beach dock master?**
 22 A. I believe so, yes.
 23 **Q. Never held the title of police**
 24 **officer at Ocean Beach?**
 25 A. No.

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1 Cherry
 2 **Q. Never held the title of the**
 3 **dispatcher at Ocean Beach?**
 4 A. No. Not to my knowledge.
 5 **Q. When your son was a dock master at**
 6 **Ocean Beach do you know who he reported to?**
 7 A. I believe Chief Paradiso and
 8 Sergeant Hesse.
 9 **Q. Did your son have a personal**
 10 **relationship with Mr. Hesse outside of his**
 11 **duties as a dock master for the Village of**
 12 **Ocean Beach?**
 13 MR. NOVIKOFF: Objection.
 14 MR. CONNOLLY: Objection.
 15 A. I believe they became friends
 16 having worked together at Ocean Beach.
 17 **Q. Did they ever travel together on**
 18 **vacation?**
 19 A. I don't know.
 20 **Q. Do you know whether they**
 21 **socialized outside of their duties at Ocean**
 22 **Beach?**
 23 MR. NOVIKOFF: Objection.
 24 A. I believe they did occasionally.
 25 **Q. Did your son have a social**

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1 Cherry
 2 **relationship outside of his duties with the**
 3 **Village of Ocean Beach with Chief Paradiso?**
 4 A. No.
 5 **Q. Have you ever been convicted of a**
 6 **crime?**
 7 A. No, sir.
 8 **Q. I believe you testified that your**
 9 **wife received a subpoena, so I am assuming**
 10 **that you are married; is that correct?**
 11 A. Yes.
 12 **Q. And how many children do you have?**
 13 A. Three.
 14 **Q. So there is Patrick -- just tell**
 15 **me the names and ages of the other children?**
 16 A. I have a daughter Nora, she is 30,
 17 and a daughter Deidre, D-E-I-D-R-E, and she is
 18 26.
 19 **Q. Has Nora ever been employed by the**
 20 **Village of Ocean Beach?**
 21 A. No.
 22 **Q. Has Nora ever been employed by**
 23 **Suffolk County?**
 24 A. No.
 25 **Q. Has Deidre ever been employed by**

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1 Cherry
 2 **the Village of Ocean Beach?**
 3 A. No.
 4 **Q. Has Deidre ever been employed by**
 5 **Suffolk County?**
 6 A. No.
 7 **Q. Other than for your wife has**
 8 **anybody lived with you at any point in time**
 9 **between October of 2004 and the present?**
 10 A. Yes.
 11 **Q. Who is that?**
 12 A. Well, other than my daughter.
 13 **Q. Which daughter?**
 14 A. Deidre.
 15 **Q. What dates did she live with you**
 16 **during that period?**
 17 A. She has lived there all her life.
 18 Did you say 2004 --
 19 **Q. Well, since October 2004, which is**
 20 **when the Halloween incident occurred I want to**
 21 **know the people who are over 18 who have lived**
 22 **with you other than your wife and your**
 23 **daughter Deidre?**
 24 A. My daughter Nora also lived with
 25 us until last year, 2007.

12 (Pages 42 to 45)

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<p style="text-align: right;">Page 46</p> <p>1 Cherry</p> <p>2 Q. When we refer to the Halloween</p> <p>3 incident just so that everybody is clear what</p> <p>4 are you referring to?</p> <p>5 A. That was a Halloween of 2004,</p> <p>6 there was an incident at Houser's Bar.</p> <p>7 Houser's Restaurant. It is a restaurant and</p> <p>8 bar.</p> <p>9 Q. You testified that there was an</p> <p>10 incident happened at Houser's Bar, what was</p> <p>11 that incident?</p> <p>12 A. I guess the officers who were</p> <p>13 working that night received a call that Gary</p> <p>14 Bossetti was trying to break up a fight from</p> <p>15 what I understand, and received two calls, and</p> <p>16 they responded, or I believe it was Officer</p> <p>17 Fiorilli, Snyder and Lamm responded, and there</p> <p>18 was an allegation that Gary Bossetti had</p> <p>19 assaulted a number of the people with a pool</p> <p>20 cue and his fist.</p> <p>21 Q. Just so we are clear, when we</p> <p>22 refer to the Halloween incident, that is what</p> <p>23 we are referring to?</p> <p>24 A. Yes.</p> <p>25 Q. Did you ever discuss the Halloween</p>	<p style="text-align: right;">Page 48</p> <p>1 Cherry</p> <p>2 part of it was about this Halloween incident.</p> <p>3 Q. Have you ever discussed the merits</p> <p>4 of the lawsuit with your daughter Deidre?</p> <p>5 MR. NOVIKOFF: Objection.</p> <p>6 A. No.</p> <p>7 Q. Did you ever discuss the merits of</p> <p>8 the lawsuit with your daughter Nora?</p> <p>9 MR. NOVIKOFF: Objection.</p> <p>10 A. No.</p> <p>11 Q. Have you ever discussed the</p> <p>12 Halloween incident with your son Patrick?</p> <p>13 A. Yes.</p> <p>14 Q. When was that conversation --</p> <p>15 strike that.</p> <p>16 How many times have you discussed</p> <p>17 the Halloween incident with your son Patrick?</p> <p>18 A. A number of times after the</p> <p>19 allegations were made when I informed him I</p> <p>20 got the subpoena to appear for -- to give a</p> <p>21 deposition about it.</p> <p>22 Q. How about at the time that you</p> <p>23 were assisting Mr. Hesse in the purported</p> <p>24 investigation?</p> <p>25 A. I may have mentioned it, probably</p>
<p style="text-align: right;">Page 47</p> <p>1 Cherry</p> <p>2 incident with your daughter Deidre?</p> <p>3 A. Not directly, no. My wife and I</p> <p>4 discussed the lawsuit and my daughter may have</p> <p>5 overheard it, but I never really discussed it</p> <p>6 with her.</p> <p>7 Q. I am not asking you any</p> <p>8 conversation you had with your wife. I just</p> <p>9 want to know conversation you had with your</p> <p>10 daughter Deidre?</p> <p>11 A. My daughter Deidre was aware that</p> <p>12 there was a lawsuit involved, but I never had</p> <p>13 a conversation with her directly about the</p> <p>14 lawsuit and or the allegations made in it.</p> <p>15 But she is aware of what goes on in the house.</p> <p>16 Q. Did you ever discuss the merits of</p> <p>17 the lawsuit with your daughter Deidre?</p> <p>18 A. No.</p> <p>19 MR. NOVIKOFF: Objection.</p> <p>20 Q. Did you ever discuss the Halloween</p> <p>21 incident with your daughter Nora?</p> <p>22 A. Directly, no.</p> <p>23 Q. What do you mean by directly?</p> <p>24 A. Same thing. She knew there was a</p> <p>25 lawsuit involved, and it was about the -- my</p>	<p style="text-align: right;">Page 49</p> <p>1 Cherry</p> <p>2 mentioned that to him. Yeah, you know, there</p> <p>3 was an incident over there in conversation.</p> <p>4 Q. Was he employed by the Village of</p> <p>5 Ocean Beach at that time?</p> <p>6 A. No.</p> <p>7 Q. At the time of the Halloween</p> <p>8 incident?</p> <p>9 A. No, he was not.</p> <p>10 Q. Why did he leave the employ of the</p> <p>11 Village of Ocean Beach?</p> <p>12 A. Probably went to another job, it</p> <p>13 may have been the Police Department. I am not</p> <p>14 sure exactly when he left and when he joined</p> <p>15 the Police Department, but he left there. It</p> <p>16 was a summer employment job, seasonal job,</p> <p>17 probably left there to go to the Police</p> <p>18 Department.</p> <p>19 Q. During the time that your son was</p> <p>20 a seasonal dock master, was that his title?</p> <p>21 A. Yes.</p> <p>22 Q. At the time that he was a seasonal</p> <p>23 dock master at Village of Ocean Beach did he</p> <p>24 hold any other job either during the season or</p> <p>25 after the season?</p>

Cherry

A. I don't believe so.

Q. And let's go back to the conversations that you had with your son at or around the time of the purported investigation into Halloween. Do you recall when the first time you spoke with him about the Halloween incident was?

A. It was probably shortly after George asked me to assist him with looking into it.

Q. When did George ask you to assist him, do you recall?

A. I believe it was probably around November 1st of 2004.

Q. What did you discuss with your son at that time during the first conversation with respect to the Halloween incident?

A. Basically that George -- that there was an incident over at the Houser's Bar and it was alleged that Gary assaulted -- Gary Bossetti assaulted someone or a number of people over there, and that George was going to do an investigation and he asked me to assist in the investigation.

Cherry

either of you said during that conversation?

A. That is to the best of the recollection, just informing him what is going on in Ocean Beach, and George asked me to assist him.

Q. Was that conversation in person, over the phone or some other means?

A. Probably in person.

Q. Do you recall where you were?

A. At home.

Q. At your home?

A. Yes.

Q. Was Patrick Cherry living with you at the time?

A. No, but he would come over often.

Q. Did he express other than telling you that Richard Bossetti was not the type that would go out and assault somebody with a pool stick, did he express any other beliefs about that incident at the time?

A. No. Gary Bossetti is the person to which --

Q. I see what you are saying, I apologize.

Cherry

Q. You say it was alleged that Gary Bossetti had assaulted a number of people over the head. Who was alleging that?

A. Apparently the officers who were responding to the scene filed a report in which they -- it stated that he assaulted somebody. It was assault third degree investigation.

Q. Was your understanding at that time of the allegations against Mr. Bossetti, were those based on the report that you just testified to, or did you have that information from some other source?

MR. NOVIKOFF: Objection.

A. The report.

Q. Do you recall what your son said in response to what you told him about the Halloween incident at that time?

A. I just told him about it. He was -- he had the same opinion that I did. Gary was not the type of guy that would assault somebody. He said what happened, I said I don't know, we have to look into it.

Q. Do you recall anything else that

Cherry

A. No, just that this was about the extent, disbelief that Gary would do something like that with no reason.

Q. Other than for that one conversation did you have any other conversations at or about the time you were assisting in the purported investigation with your son about the Halloween incident?

A. Not that I know of.

Q. What was the next time that you recall speaking to your son about the incident?

A. Well, I don't know the exact times, but he would come out and say how is it going, what is going on with the investigation, something like that, and I would tell him what I knew at the time.

Q. You would tell him -- strike that.

Those conversations, those occurred while the investigation was going on?

A. Well, my involvement only took a -- probably a week or so. After that it was George had completed the investigation. I assisted him in the investigation about a week

1 Cherry

2 and then George completed the investigation.

3 So it would have to be -- he just
4 asked me what is going on with that, what is
5 going on with the investigation. I would tell
6 him what I knew at time. He showed an
7 interest in what was going on.

8 **Q. Just so I am clear now. Those**
9 **conversations that happened during the week**
10 **that you were assisting on the investigation**
11 **or after that?**

12 A. The first conversation took place
13 a day or two after I first started assisting.
14 As he came out, I don't recall the times he
15 came out, maybe once every couple of weeks he
16 would stop by, and I recall him inquiring
17 about what was going on over there, how is it
18 going. I would tell him what I knew.

19 **Q. So just so I am clear, sir, you**
20 **were disclosing what you learned from the**
21 **investigation to a person who was not employed**
22 **by the beach while the investigation was**
23 **pending; is that correct?**

24 MR. NOVIKOFF: Objection.

25 A. I would tell him I knew, yes.

1 Cherry

2 **Q. And do you recall how many times**
3 **during the investigation those conversations**
4 **occurred on?**

5 MR. NOVIKOFF: Objection.

6 A. I don't know the exact number of
7 times.

8 **Q. More than two?**

9 A. Yes, probably. As I said he came
10 out, not every time, he would say what is new
11 at Ocean Beach and this is something -- if
12 something new developed I would mention it to
13 him. He wanted to know. As I say it was
14 casual conversation between father and son
15 having both worked over there, he would
16 inquire what was going on. Sometimes I didn't
17 know anything or I didn't tell him because
18 there was nothing to tell.

19 **Q. I am just focusing on the**
20 **Halloween incident, not what other things may**
21 **be happening at Ocean Beach?**

22 A. Right.

23 **Q. When was the time that you recall**
24 **speaking to him about the Halloween incident**
25 **after that first group of conversations that**

1 Cherry

2 **you just testified to?**

3 A. Probably the outcome, after
4 Mr. Van Koot was arrested. What the outcome
5 of the investigation was.

6 **Q. Prior to the outcome of Mr. Van**
7 **Koot being arrested had you expressed to your**
8 **son your belief as to what happened that**
9 **night?**

10 A. Yes.

11 **Q. What was the first time that you**
12 **expressed to him your belief as to what had**
13 **happened that night?**

14 A. After we finished taking the
15 statements from a number of witnesses.

16 **Q. When was that, the first time that**
17 **you recall telling your son about your belief**
18 **of what happened that night?**

19 A. It was -- could you repeat the
20 question.

21 **Q. When, approximately what date was**
22 **that?**

23 A. I think I finished with my part of
24 assisting George around the 7th of November.
25 We had finished -- I had finished taking

1 Cherry

2 statements from the witnesses and developed a
3 sense of what happened. So sometime after
4 that I may have expressed it to my son.

5 **Q. Do you recall what you told your**
6 **son about what happened?**

7 A. I said I believe Gary acted in
8 defense of a third person. Was attacked by
9 the person who was assaulting a woman in the
10 hallway and two of his friends came over and
11 joined in the fray and started kicking and
12 punching Gary. I said I felt he acted in
13 defense of a third person and for self
14 defense.

15 **Q. What was that conclusions based**
16 **on?**

17 A. The statements that I had taken
18 from three witnesses and ones that George
19 Hesse had taken.

20 **Q. We will get into detail of those**
21 **statements later, but which three witnesses**
22 **are you referring to?**

23 A. Jeannie Jaegger, J-A-E-G-G-E-R, I
24 am not sure of the spelling, I have to check
25 the statements. Ian Levine and Sean O'Rourke.

Cherry

Q. Which witness statements were you referring to that Mr. Hesse had taken?

A. I believe he took the statement from Doug Wycoff, W-Y-C-O-F-F, I believe it is.

Q. Any other statements?

A. That was all I knew of at the time.

Q. Had you taken into account the witness statements that were taken the night of the incident?

A. Yes.

Q. So those are additional statements that you took into account?

A. I knew about those statements, but they didn't really give much information other than that they were attacked by someone who said he was a police officer.

Q. But when you testified that you spoke to your son about what happened that night, you testified that you base that on the three witnesses statements that you took plus Mr. Wycoff; is that correct?

MR. NOVIKOFF: Objection to the

Cherry

night. Do you recall what his reaction was?

A. Other than just listening to me he didn't show any particular reaction. I mean he didn't react to what I told him, you know, okay. He just listened to me.

Q. Had you spoken to any other witnesses other than for the four that you listed?

A. No.

MR. NOVIKOFF: Hold it.

Q. At the time -- by the time that you told your son what had happened?

MR. NOVIKOFF: Objection to the question. I think he said he only took three witnesses and read Hesse's.

Q. Have you spoken to any witnesses other than for the three that you had taken?

A. No.

Q. Let me finish the question.

At the time that you disclosed to your son what you believed happened that night had you spoken to any other witnesses other than Ms. Jaegger, Mr. Levine and Mr. O'Rourke?

A. No.

Cherry

form. You can answer.

Q. Is that correct?

A. Yes.

Q. So my question to you was your conclusion or your belief about what happened, was that based at all based on the statements taken of the witnesses on Halloween night?

MR. NOVIKOFF: Objection. You can answer.

A. Other than I read the three statements, they didn't indicate what had happened prior to them being assaulted. These statements gave a bigger picture to show us what happened prior to them being assaulted, what they said -- what they claimed to be an assault.

Q. So did you believe those statements of those witnesses that were taken on the night of the Halloween incident to be incomplete?

A. Yes.

Q. I just want to go back to the conversation in which you disclosed to your son what you believed what happened that

Cherry

Q. Had you read any witness statements other than for Mr. Wycoff and the witness statements that were taken the night of the Halloween incident?

A. Any others?

Q. Had you read any other witness statements?

A. No.

Q. Was your belief as to what happened that night based on anything else other than for the seven statements that you have discussed today; meaning the three that you took, the one that Mr. Hesse took, and the three witness statements that were taken the night of the incident?

A. Sorry, I lost the question. Was it based on anything else other than that?

Q. Yes.

A. No.

Q. Was your belief of what happened based on anything else other than for those seven witness statements and/or whatever conversations you had with the witnesses that you took?

Cherry

A. That is correct, there was no other basis, no other statements that I read, or no other basis for my conclusion at that time.

Q. And do you recall when the next time you spoke to your son about the Halloween incident was subsequent to the discussion where you disclosed to him what you believed happened?

A. No. Other than I think sometime I probably told him that there had been an arrest in the case, and that I believe Mr. Van Koot had been arrested and one of the other defendants, subjects had been arrested. Other than that it sort of ended the -- I didn't go back to work until the following season, there was not much conversation after that.

Q. And the Halloween incident, that was after the season; is that correct?

A. That is correct.

Q. So at the time that you were asked to assist Mr. Hesse you were not actively working at the beach, were you?

A. That is correct.

Cherry

the time sheet.

Q. So when you were working there during those 16 to 20 hours there still was the normal police shift; you didn't replace any other police officers that were scheduled to work those hours; is that correct?

MR. NOVIKOFF: Objection.

A. No, sir.

Q. I want to quickly go through your educational background. What was the highest level of education that you completed?

A. Probably about one year of college, one year's credits of college.

Q. Where was that?

A. State University of New York Farmingdale at the time.

Q. Did you receive any kind of degree or diploma or certificate from that school?

A. No.

Q. Do you have any degrees, certificates or diploma subsequent to that?

A. As far as educational institutions?

Q. Yes.

Cherry

Q. So you specifically came to work at the beach to perform your duties assisting Mr. Hesse; is that correct?

A. That is correct.

Q. Were you paid for those duties?

A. Yes.

Q. Were you paid your same rate that you were paid for being a police officer?

A. Yes.

Q. Were you paid anything more than what you were paid as a police officer?

A. No.

Q. How many hours did you log or did you get paid for in connection with your investigation?

A. I would say maybe 16. 16, 20 hours, I am not sure of the exact time.

Q. Were you actually placed on the schedule during that period?

A. No, I was not.

Q. So how did you put in your request to be paid for those hours?

A. I wasn't on the schedule. We have a time sheet that we fill out. I filled out

Cherry

A. No.

Q. How about as far as any other type of institutions?

A. The Police Department.

Q. What certificate or diploma do you have from the Police Department?

A. Well, upon completion of the Police Academy are you given a municipal Chiefs of Police training certificate.

Q. When did you receive that?

A. In January of 1971.

Q. Other than for the police training certificate do you have any other certificates, degrees or diplomas subsequent to your attendance at SUNY Farmingdale?

A. I have police courses that I went to, a number of certificates for training purposes, usually one or two week school.

Q. Which certificates do you have?

A. The Drug Enforcement Agency, I have two or three certificates from them for training. The FBI Firearms Instructors School, that was in service training at the Police Department. A number of those that are

1 Cherry
2 given every three or four years.
3 There is probably several more,
4 but I have to look up my files to see. But
5 they were basically training schools for the
6 Police Department. Oh, The International
7 Association of Drug Diversion Investigators
8 course.

9 **Q. Any others?**

10 A. Not that I can recall at this
11 time.

12 **Q. You say you have to check your
13 files. What are you referring to?**

14 A. I have copies of the certificates
15 that I got.

16 **Q. Did you keep any file or files
17 with respect to your assistance in
18 investigating the Halloween incident?**

19 A. No.

20 **Q. Do you have any paperwork or
21 documents in your possession that related to
22 your assistance in the Halloween incident?**

23 A. I have copies of the statements
24 that I took.

25 **Q. Where do you keep those?**

1 Cherry

2 A. No. That is I think all the
3 statements involved.

4 **Q. Why did you take those home to
5 your house?**

6 A. Well, I learned -- I took the
7 other copies when I learned there was a
8 lawsuit just to review them.

9 **Q. So again so we are clear, you took
10 the three statements that you took?**

11 A. Uh-hum.

12 **Q. Home with you in or around
13 November of 2004?**

14 A. Right.

15 **Q. And then you took copies of the
16 statements that the officers took that night,
17 and those are the witness statements that you
18 are referring to?**

19 A. Yes.

20 **Q. As well as a copy of the Wycoff
21 statement?**

22 A. Yes.

23 **Q. And that was in or around 2007
24 when the complaint was filed?**

25 A. I believe it was after we got the

1 Cherry

2 A. They are in my file drawer in my
3 house.

4 **Q. When did you take a copy of that
5 to your file drawer in your house?**

6 A. I usually took them, I made a copy
7 of them after we took the statements.

8 **Q. So just so I understand, at some
9 point in early November of 2004 you made a
10 copy of the statements and took them home with
11 you?**

12 A. Yes.

13 **Q. You still maintain those today?**

14 A. Yes.

15 **Q. Do you have any other copies of
16 statements of the witnesses that you didn't
17 take?**

18 A. Yes.

19 **Q. So which copies of the statements
20 of the witnesses that you didn't take do you
21 have?**

22 A. I have got the three copies that
23 the officers took. I have got the copy that
24 George took, Mr. Wycoff.

25 **Q. Any others?**

1 Cherry

2 complaint, that is when I took -- after we got
3 the complaint. So we got the complaint, I
4 don't know when I actually read it, but it was
5 after I read the complaint I made some copies
6 just to review them.

7 **Q. Did you get permission from
8 somebody to make copies and take them home?**

9 A. I asked George whether I could
10 make copies and he said yes.

11 **Q. And take them home?**

12 A. Yes.

13 **Q. You got permission both in '04
14 when you did it, and after you learned of the
15 lawsuit, both times you got permission from
16 him?**

17 A. I don't think I asked him for
18 permission in '04, but I usually take copies
19 of the statements that I make. You see there
20 was a case file in the office that the copies
21 were maintained, but I made a copy for my
22 personal possession.

23 MR. NOVIKOFF: Hold on.
24 (Witness confers with counsel.)

25 **Q. Just so I am clear, the copies**

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1 Cherry
2 that you made for your personal possession,
3 were you authorized to take that from somebody
4 at Ocean Beach?

5 MR. NOVIKOFF: Objection. You can
6 answer.

7 A. Not specifically, no.

8 Q. And the copies that you took after
9 you learned that the lawsuit had been filed,
10 were you authorized from somebody at Ocean
11 Beach to take those copies home?

12 MR. NOVIKOFF: Objection.

13 A. I asked if I could make copies of
14 them and I was told that I could.

15 Q. Just so I am clear, I am not
16 talking about making the copies, I am talking
17 about actually taking the copies off of Ocean
18 Beach to your home?

19 A. Okay.

20 MR. NOVIKOFF: Note my objection.

21 Q. Were you authorized to do that?

22 MR. NOVIKOFF: Note my objection.

23 A. Not specifically authorized, but
24 there was no objection to it.

25 Q. Well, did you alert anybody at

1 Cherry

2 make copies of the statements involved.

3 Q. Did you make copies of any other
4 documents other than for the three witnesses
5 who you took, Wycoff, and the three witnesses
6 who were the on duty officers took on the
7 night of the incident?

8 A. No.

9 Q. You didn't take any statements
10 that were made that were produced by the
11 officers?

12 MR. NOVIKOFF: Objection.

13 A. No.

14 Q. You didn't take any statement that
15 was provided by either Gary Bossetti or
16 Richard Bossetti?

17 A. No.

18 Q. You didn't take any statements
19 that were provided by any other witnesses?

20 A. No, sir.

21 Q. And where did you get the
22 documents from that you took the time that you
23 learned that the complaint was filed?

24 A. Where did I get the documents
25 from?

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1 Cherry
2 Ocean Beach that you were going to take copies
3 home with you?

4 A. Well, I asked if I could have a
5 copy of them. I assumed I was going to take
6 them home.

7 Q. Who did you ask whether you could
8 have a copy?

9 A. I asked George if I could --
10 George Hesse if I could make a copy.

11 Q. And what was his response?

12 A. He said yes.

13 Q. Did you tell him why you were
14 making copies of them and taking them home?

15 A. Yes. So I could review them, I
16 know we were going to have a hearing on it.

17 Q. Just so I am clear, this is at the
18 time that the complaint was filed you took
19 them because you knew there was going to be a
20 hearing on it?

21 A. Well, they made a -- they made a
22 complaint involving me. I felt that I had to
23 defend myself somewhere along the line or a
24 deposition like this, I should have some
25 references to look at. So I asked if I could

1 Cherry

2 Q. Yes.

3 A. There is a case jacket in the
4 office.

5 Q. Where is that kept in the office?

6 A. In a file.

7 Q. Where is that file located?

8 A. In the back in the office. The
9 station house.

10 Q. Whose office is that?

11 A. It is -- I don't know if you are
12 familiar with the -- it is -- well, it is the
13 office. There is a front desk and then there
14 is the office, everything is -- files are in
15 the office.

16 Q. There are desks in the office?

17 A. Yes.

18 Q. Who has a desk in the office, or
19 who had a desk at the time?

20 A. George has his desk there and then
21 there is about three other desks or -- one
22 other desk and then a row of -- a shelf where
23 the file drawer was under the shelf. That is
24 where the guys do their work and stuff. So it
25 is not an office per se, it is the whole

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<p>1 Cherry</p> <p>2 office. The station, just a very small</p> <p>3 station.</p> <p>4 Q. Does Chief Paradiso have a desk</p> <p>5 there?</p> <p>6 A. Yes, he did.</p> <p>7 Q. Does he currently have a desk</p> <p>8 there?</p> <p>9 A. No, he is retired now.</p> <p>10 Q. Have you ever been a party to any</p> <p>11 lawsuit?</p> <p>12 A. No. Other than this one, no.</p> <p>13 MR. NOVIKOFF: Other --</p> <p>14 A. I'm sorry, no. I am thinking of</p> <p>15 party, so...</p> <p>16 Q. Have there ever been any</p> <p>17 grievances filed against you either in your</p> <p>18 employment at Ocean Beach or in your</p> <p>19 employment with Nassau County?</p> <p>20 A. No.</p> <p>21 Q. Have you ever been disciplined</p> <p>22 either during your employment with Ocean Beach</p> <p>23 or your employment with Nassau County?</p> <p>24 A. No.</p> <p>25 Q. Have you ever threatened to sue</p>	<p>1 Cherry</p> <p>2 Q. What does a PBA do?</p> <p>3 MR. NOVIKOFF: Objection.</p> <p>4 A. They are the bargaining agent for</p> <p>5 the police officers in Nassau County, and a</p> <p>6 benevolent association.</p> <p>7 Q. Other than representing you, let's</p> <p>8 focus on the Nassau County PBA because that is</p> <p>9 what you are familiar with, other than</p> <p>10 representing you and the other officers who</p> <p>11 were members in collective bargaining, what</p> <p>12 else did the PBA do on your behalf?</p> <p>13 A. They provided attorneys if you</p> <p>14 needed one. They have a Christmas party, you</p> <p>15 know, members and benefit type things.</p> <p>16 Q. Do you know how the PBA raised its</p> <p>17 funds from Nassau County?</p> <p>18 A. We pay dues.</p> <p>19 Q. Do they ever have any fundraisers?</p> <p>20 A. I don't believe so, no.</p> <p>21 Q. Do they ever solicit donations</p> <p>22 from anybody?</p> <p>23 A. I don't think that Nassau did, to</p> <p>24 my knowledge.</p> <p>25 Q. So you never took part in any kind</p>
Page 75	Page 77
<p>1 Cherry</p> <p>2 any of your employers?</p> <p>3 A. No.</p> <p>4 Q. Have you ever threatened to sue</p> <p>5 any union that may have represented you?</p> <p>6 A. No.</p> <p>7 Q. Have you ever been a member of a</p> <p>8 union?</p> <p>9 A. Yes.</p> <p>10 Q. Which union?</p> <p>11 A. The Police Benevolent Association</p> <p>12 of Nassau County, and the Detectives</p> <p>13 Association Incorporated of Nassau County.</p> <p>14 Q. You said the Police Benevolent</p> <p>15 Association of Nassau County, is that also</p> <p>16 known as the PBA of Nassau County?</p> <p>17 A. That is correct.</p> <p>18 Q. Did Ocean Beach ever have a PBA?</p> <p>19 A. Not to my knowledge.</p> <p>20 Q. So you were never a member of any</p> <p>21 police benevolent association or police</p> <p>22 benefit association?</p> <p>23 A. Of Ocean Beach?</p> <p>24 Q. Of Ocean Beach?</p> <p>25 A. No.</p>	<p>1 Cherry</p> <p>2 of drive or situation where the Nassau County</p> <p>3 PBA was trying to solicit donations?</p> <p>4 MR. NOVIKOFF: Objection.</p> <p>5 A. No, sir.</p> <p>6 Q. Did you ever take part in any</p> <p>7 drive or other circumstances where the Ocean</p> <p>8 Beach Police Department was soliciting</p> <p>9 donations?</p> <p>10 A. No.</p> <p>11 Q. Does the Ocean Beach Police</p> <p>12 Department actively solicit donations?</p> <p>13 A. I am not sure.</p> <p>14 Q. Are you aware of any time when the</p> <p>15 Ocean Beach Police Department has actively</p> <p>16 solicited donations?</p> <p>17 A. I am not personally aware of it,</p> <p>18 no.</p> <p>19 Q. What have you done to prepare for</p> <p>20 this deposition?</p> <p>21 A. I read over the statements that I</p> <p>22 took, and that is about it.</p> <p>23 Q. Just so I am clear, you only read</p> <p>24 over the ones that you took?</p> <p>25 A. The package pertaining to the</p>

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1 Cherry
2 Halloween incident.

3 **Q. So the statements that you took,**
4 **you mean the statements that you took home**
5 **with you?**

6 A. The statements that I took and the
7 statements that I took home with me. The ones
8 that I actually did take and the copies of the
9 statements that I took home.

10 **Q. So the statements that you took,**
11 **that is incorporated in the statements that**
12 **you took home; correct?**

13 A. Yes. That is correct.

14 **Q. Did you review any other documents**
15 **other than for the seven witness statements**
16 **that you testified that you took home?**

17 A. No.

18 **Q. Did you ever review a copy of the**
19 **complaint in preparation for this?**

20 A. I reread the complaint, I don't
21 have a copy of it.

22 **Q. I am talking about in preparation**
23 **for the deposition, did you read a copy of the**
24 **complaint?**

25 A. Recently?

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1 Cherry

2 **Q. To prepare for today's deposition?**

3 A. No.

4 **Q. Did you review any other documents**
5 **to prepare for today's deposition other than**
6 **for those seven witness statements?**

7 A. No.

8 **Q. Did you speak to anybody in**
9 **preparation for today's deposition?**

10 A. No.

11 MR. NOVIKOFF: Other than counsel.

12 A. Other than counsel.

13 **Q. You spoke to counsel, I don't want**
14 **to know what you spoke about, but you spoke to**
15 **counsel?**

16 A. Yes.

17 **Q. How many times did you speak to**
18 **counsel to prepare for the deposition?**

19 A. Once.

20 **Q. How long did that meeting last?**

21 MR. NOVIKOFF: I am going to
22 object.

23 MR. GOODSTADT: I don't want --

24 MR. NOVIKOFF: I will object. I
25 think the question is improper, but

1 Cherry

2 subject to whatever objections I have on
3 attorney/client privilege and based upon
4 our prior discussion that by allowing the
5 witness to answer that question I am not
6 waiving the objection on the basis of
7 privilege you can answer that. Is that
8 okay?

9 MR. GOODSTADT: Agreed.

10 A. About two hours.

11 **Q. Can was anyone present other than**
12 **for attorneys and you?**

13 A. No.

14 **Q. When did that two hour meeting**
15 **last -- when did it occur?**

16 A. Yesterday.

17 **Q. Other than for the conversation**
18 **with counsel did you speak with anybody else**
19 **in preparation for today's deposition?**

20 A. No.

21 **Q. You didn't speak with anybody at**
22 **Ocean Beach to prepare for the deposition?**

23 A. No.

24 **Q. When was the last time that you**
25 **spoke with Joseph Loeffler?**

1 Cherry

2 A. Probably early September after
3 Labor Day.

4 **Q. Was that during the season or**
5 **after the season?**

6 A. Just at the end of the season.

7 **Q. Was that after the season or**
8 **during the season?**

9 A. It was during the season that I
10 worked. I worked until I think the second or
11 third week in September, and I spoke to him
12 during that week, that last week.

13 **Q. Have you spoken to any, other than**
14 **for your son, have you spoken to any current**
15 **or former employee of Ocean Beach since the**
16 **end of the '08 season?**

17 A. I spoke to George Hesse.

18 **Q. When was the last time that you**
19 **spoke to George Hesse?**

20 A. Yesterday.

21 **Q. Did you discuss this case or**
22 **anything about this case with George Hesse**
23 **yesterday?**

24 A. I told him I met with the
25 attorneys and that I was going to go for the

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<p>1 Cherry</p> <p>2 deposition today. We didn't discuss any -- we</p> <p>3 didn't discuss anything else other than that I</p> <p>4 was going to the deposition today.</p> <p>5 Q. How long did that discussion last?</p> <p>6 A. About two minutes.</p> <p>7 Q. The whole discussion lasted two</p> <p>8 minutes or just about the deposition?</p> <p>9 A. Just about the whole discussion.</p> <p>10 Q. Other than for -- did you take any</p> <p>11 notes of that discussion?</p> <p>12 A. No.</p> <p>13 Q. Was that over the phone or in</p> <p>14 person?</p> <p>15 A. Over the phone.</p> <p>16 Q. Other than for that two minute</p> <p>17 phone call have you had any discussions with</p> <p>18 George Hesse subsequent to the end of the '08</p> <p>19 season?</p> <p>20 A. Subsequent to the end -- after the</p> <p>21 '08 season?</p> <p>22 Q. After it ended have you had any</p> <p>23 other correspondence whether verbal or written</p> <p>24 with George Hesse?</p> <p>25 A. Yes. I spoke to him a couple of</p>	<p>1 Cherry</p> <p>2 depositions?</p> <p>3 A. No.</p> <p>4 Q. Did you discuss the Gilbert matter</p> <p>5 with him?</p> <p>6 A. No.</p> <p>7 Q. Did you discuss anything at all</p> <p>8 about Ocean Beach with him during that</p> <p>9 conversation?</p> <p>10 A. No, we try not to.</p> <p>11 MR. NOVIKOFF: Just answer the</p> <p>12 question.</p> <p>13 Q. Did you take any notes of your</p> <p>14 conversation with him?</p> <p>15 A. No.</p> <p>16 Q. Do you know whether he took any</p> <p>17 notes?</p> <p>18 A. No, sir.</p> <p>19 Q. You don't know or --</p> <p>20 A. Not to my knowledge.</p> <p>21 Q. Prior to the coffee last Wednesday</p> <p>22 or Thursday when was the time before that that</p> <p>23 you spoke with Mr. Hesse?</p> <p>24 A. Probably talked to him on the</p> <p>25 phone a week or two before that.</p>
Page 83	Page 85
<p>1 Cherry</p> <p>2 times, we had coffee once.</p> <p>3 Q. How many times have you spoken to</p> <p>4 him other than for the two minute discussion</p> <p>5 yesterday?</p> <p>6 A. Probably twice on the phone and</p> <p>7 once having coffee.</p> <p>8 Q. Let's work backwards</p> <p>9 chronologically from yesterday. When was the</p> <p>10 time before yesterday that you spoke with Mr.</p> <p>11 Hesse?</p> <p>12 A. I had coffee with him I believe it</p> <p>13 was last week, I am not sure what day,</p> <p>14 Wednesday or Thursday of last week.</p> <p>15 Q. Where did you have coffee with</p> <p>16 him?</p> <p>17 A. Barnes & Noble in Bay Shore.</p> <p>18 Q. How long were the two of you</p> <p>19 together?</p> <p>20 A. About a half hour.</p> <p>21 Q. Did you discuss this case or any</p> <p>22 allegations of this case with him at that</p> <p>23 time?</p> <p>24 A. No.</p> <p>25 Q. Did you tell him about</p>	<p>1 Cherry</p> <p>2 Q. How long did that conversation</p> <p>3 last?</p> <p>4 A. A couple of minutes.</p> <p>5 Q. Did you call him or did he call</p> <p>6 you?</p> <p>7 A. I called him.</p> <p>8 Q. What was the purpose of the call?</p> <p>9 A. He had a court appearance and I</p> <p>10 just asked him how it went.</p> <p>11 Q. Did you ask him how it went?</p> <p>12 A. Yes.</p> <p>13 Q. What was his response?</p> <p>14 A. He said he didn't have to appear,</p> <p>15 his lawyer -- it was a conference and his</p> <p>16 lawyer told him that he didn't have to appear.</p> <p>17 MR. NOVIKOFF: Read back the</p> <p>18 question and answer.</p> <p>19 (Record read.)</p> <p>20 Q. Did he tell you anything else</p> <p>21 about that conference?</p> <p>22 A. No.</p> <p>23 Q. What else did you discuss with him</p> <p>24 on that phone call?</p> <p>25 A. That was about it.</p>

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<p style="text-align: right;">Page 86</p> <p>1 Cherry</p> <p>2 Q. How long did that phone call last?</p> <p>3 A. A minute or two at most.</p> <p>4 Q. How did you know that he had a</p> <p>5 conference that day?</p> <p>6 A. Its -- I keep track of that when</p> <p>7 he has to go. Sometimes I go to the hearing,</p> <p>8 go to the court with him.</p> <p>9 Q. How do you keep track of the court</p> <p>10 dates?</p> <p>11 A. It is listed on the Suffolk County</p> <p>12 DA's web-site, it has a link to the court</p> <p>13 calendar, and I check it occasionally.</p> <p>14 Q. Do you recall anything else that</p> <p>15 was discussed during that conversation?</p> <p>16 A. Pardon me?</p> <p>17 Q. Was anything else discussed during</p> <p>18 that conversation?</p> <p>19 A. No.</p> <p>20 Q. Prior to that conversation which</p> <p>21 was probably about three weeks ago or so what</p> <p>22 was the time before that when you spoke with</p> <p>23 Mr. Hesse?</p> <p>24 A. It was probably during working,</p> <p>25 when I was working.</p>	<p style="text-align: right;">Page 88</p> <p>1 Cherry</p> <p>2 A. Yes.</p> <p>3 Q. Did you speak with Mr. Clemens in</p> <p>4 person or over the phone?</p> <p>5 A. Over the phone.</p> <p>6 Q. And did you call him or he called</p> <p>7 you?</p> <p>8 A. I called him.</p> <p>9 Q. Where did you call him at?</p> <p>10 A. I called him at the Ocean Beach</p> <p>11 police headquarters.</p> <p>12 Q. Why did you call him?</p> <p>13 A. To tell him that I was going to a</p> <p>14 deposition.</p> <p>15 Q. Why did you call Mr. Clemens to</p> <p>16 tell him that?</p> <p>17 A. Just to log it in just in case</p> <p>18 there was an accident or something, I was on</p> <p>19 department business. I signed on with him to</p> <p>20 let him know I was going to the deposition,</p> <p>21 and it was official department business or</p> <p>22 village business.</p> <p>23 Q. Are you being paid by the</p> <p>24 department to testify today?</p> <p>25 A. Yes.</p>
<p style="text-align: right;">Page 87</p> <p>1 Cherry</p> <p>2 Q. So subsequent to the '08 season</p> <p>3 ending do you recall speaking to him twice on</p> <p>4 the phone and once in person at the coffee?</p> <p>5 A. Yes.</p> <p>6 Q. And during any of those</p> <p>7 conversations other than what you already</p> <p>8 testified to, yesterday's conversation, did</p> <p>9 you discuss this case or anything about this</p> <p>10 case with him?</p> <p>11 A. No.</p> <p>12 Q. Other than for Mr. Hesse and your</p> <p>13 son, have you spoken with any current or</p> <p>14 former employee of Ocean Beach between the</p> <p>15 time the '08 season ended and today?</p> <p>16 A. I spoke to Hank Clemens</p> <p>17 (phonetic), I called him --</p> <p>18 MR. NOVIKOFF: The question is who</p> <p>19 did you speak with?</p> <p>20 Q. Who is Hank Clemens?</p> <p>21 A. Hank Clemens is a police officer</p> <p>22 with the Ocean Beach Police Department.</p> <p>23 Q. Is he a full-time police officer?</p> <p>24 A. Yes.</p> <p>25 Q. He works throughout the year?</p>	<p style="text-align: right;">Page 89</p> <p>1 Cherry</p> <p>2 Q. What rate are you being paid at?</p> <p>3 A. My basic rate.</p> <p>4 Q. Which is what?</p> <p>5 A. I believe it is \$19.67.</p> <p>6 MR. NOVIKOFF: So if you want to</p> <p>7 take the first seven hours.</p> <p>8 Q. Who told you that you would be</p> <p>9 paid for today's time?</p> <p>10 A. George Hesse.</p> <p>11 Q. When did he tell you that?</p> <p>12 A. I guess when I spoke to him, when</p> <p>13 I called him yesterday.</p> <p>14 Q. So that is something additional</p> <p>15 that you recall?</p> <p>16 A. Yes. Now that you mentioned it, I</p> <p>17 mentioned should I sign on, he said yes, you</p> <p>18 get paid for the day.</p> <p>19 Q. Was that the first time that you</p> <p>20 knew that you were going to get paid?</p> <p>21 A. Yes.</p> <p>22 Q. So why did you call Hank Clemens a</p> <p>23 couple of weeks ago then?</p> <p>24 MR. NOVIKOFF: Objection.</p> <p>25 A. No, I spoke to him yesterday.</p>

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1 Cherry
2 **Q. Your discussion with Hank Clemens**
3 **was yesterday?**

4 A. Yes.

5 **Q. I misunderstood you, I apologize.**
6 **So you spoke to Mr. Hank Clemens after you**
7 **spoke with Mr. Hesse?**

8 A. No, I spoke to Hank Clemens in the
9 morning about roughly 9:30 before, just to let
10 him know I was going to the prep for the
11 deposition, and I called him when I finished
12 up a little after 12. When we finished then I
13 called George later, about an hour later.

14 **Q. Now that you recall this**
15 **additional substance that you discussed with**
16 **Mr. Hesse yesterday, is there anything else**
17 **that you now recall discussing with him?**

18 MR. NOVIKOFF: Objection.

19 A. No.

20 **Q. Were you paid for the time that**
21 **you spent preparing yesterday?**

22 A. No.

23 **Q. Do you know why you get paid for**
24 **today and not for the time preparing?**

25 A. Because I was subpoenaed to be

1 **Cherry**
2 **graduate the academy?**

3 A. I am not sure of the exact date,
4 he has been on the police force about eight
5 years.

6 MR. NOVIKOFF: Eight years?

7 THE WITNESS: Yes.

8 **Q. So at some point in or around 2000**
9 **or so?**

10 A. 2000, yes.

11 **Q. After he left Ocean Beach to go to**
12 **the academy did he work at all at Ocean Beach**
13 **at any time from that date until today?**

14 A. No.

15 MR. NOVIKOFF: Objection.

16 **Q. And he is currently with the New**
17 **York City Police department; is that correct?**

18 A. Yes.

19 **Q. What is his title?**

20 A. Detective.

21 **Q. What precinct?**

22 A. He works out of the Firearms
23 Investigation Division of the Organized Crime
24 Control Bureau.

25 **Q. How long has he had that title?**

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1 Cherry
2 here today, and they paid me for the day, of
3 the deposition. I don't know why.

4 **Q. Do you know why they didn't pay**
5 **you for yesterday?**

6 A. No. I have no idea.

7 **Q. And other than for logging in with**
8 **Mr. Clemens for the time that you are at the**
9 **deposition today what else did you discuss**
10 **with him yesterday?**

11 A. That is it.

12 **Q. So now other than for Mr. Hesse,**
13 **Mr. Clemens and your son have you had any**
14 **conversations with any current or former**
15 **employee of Ocean Beach subsequent to the end**
16 **of the '08 season?**

17 A. No.

18 MR. GOODSTADT: Let's take a
19 break.

20 THE VIDEOGRAPHER: The time is
21 10:57, we are off the record.

22 (Recess taken.)

23 THE VIDEOGRAPHER: The time is
24 11:12, we are back on the record.

25 **Q. Mr. Cherry, when did your son**

1 **Cherry**

2 A. He has been there a short time.
3 Probably about a month.

4 **Q. Where was --**

5 A. Title detective --

6 **Q. Start with detective, how long has**
7 **he been a detective?**

8 A. About two years, two and a half
9 years.

10 **Q. How long has he been with the**
11 **Firearms Investigation Unit?**

12 A. About a month.

13 **Q. Where was he before that?**

14 A. He was with Brooklyn North
15 Narcotics.

16 **Q. How long was he there for?**

17 A. He was there about three years.

18 **Q. So he was there both prior to and**
19 **after he became a detective?**

20 A. He became a -- yes, that is
21 correct. He was a police officer, he was
22 promoted while he was in Brooklyn North and
23 stayed there until he went to the firearms
24 unit.

25 **Q. Was there additional training that**

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1 Cherry

2 **you need to become a detective?**3 A. Additional training after you make
4 detective, but it is based on merit and his
5 performance.6 **Q. When he was in Brooklyn North**
7 **Narcotics, both as a police officer and**
8 **detective, where is his home precinct; I don't**
9 **know if I am using the right vernacular?**10 A. His office -- I am not sure
11 exactly the location of his office, I have
12 never been there, but it is in Brooklyn North,
13 I am not sure what precinct, where the office
14 was.15 **Q. He has been there, he started at**
16 **Brooklyn North somewhere around 2005?**

17 A. That would be about right, yes.

18 **Q. Where is he prior to being the**
19 **Brooklyn North?**20 A. He was assigned to the 73rd
21 Precinct Anti-Crime Unit.22 **Q. Where is the 73rd Precinct?**

23 A. In Brooklyn.

24 **Q. Do you know where in Brooklyn?**

25 A. No.

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1 Cherry

2 **Q. How long was he with the 73rd**
3 **Precinct?**4 A. That is where he started his
5 career after graduating from the academy.6 **Q. So somewhere in about 2000 or 2001**
7 **he started at the 73rd?**

8 A. Yes.

9 **Q. Do you know whether either of the**
10 **Bossetti's worked at the 73rd?**

11 A. I don't know.

12 **Q. Do you know whether your son ever**
13 **worked with the Bossetti's when they were New**
14 **York City police officers?**

15 A. No, they never did.

16 **Q. Do you know one way or the other?**

17 A. No, he didn't work with them.

18 **Q. Do you know whether he knew them?**

19 A. Prior to --

20 **Q. When they were both police**
21 **officers with the New York City Police**
22 **Department?**

23 A. No, I don't believe so.

24 **Q. Do you know when they met?**

25 A. I am not sure.

1 Cherry

2 **Q. Is your son friendly with either**
3 **of the Bossetti's?**

4 MR. NOVIKOFF: Objection.

5 A. No. I mean they -- he knows them
6 to say hello, but they are not friends. They
7 don't socialize or anything like that with
8 each other.9 **Q. Have they ever worked together?**

10 A. I don't believe so.

11 **Q. So I believe you testified before**
12 **that your son said that Gary Bossetti is not**
13 **the type of guy that would go out and assault**
14 **somebody; is that correct?**15 MR. NOVIKOFF: Objection. You can
16 answer.

17 A. I believe I said that.

18 **Q. You said that?**

19 A. Yes.

20 **Q. I thought you said your son said**
21 **that, I apologize.**22 **Did your son opine on that subject**
23 **at all?**

24 A. No.

25 **Q. When did you start working as a**

1 Cherry

2 **police officer in Nassau County?**3 A. I was sworn in October 9, 1970, my
4 start date.5 **Q. How long were you employed by the**
6 **Nassau County Police Department?**

7 A. 31 years.

8 **Q. What was your last day of**
9 **employment there?**

10 A. I left there May 3, 2001.

11 **Q. Did you leave there voluntarily?**

12 A. Yes.

13 **Q. Did you retire?**

14 A. Yes, I did.

15 **Q. You collecting a full pension?**

16 A. Yes, sir.

17 MR. GOODSTADT: Would you mark
18 this as Cherry Exhibit 2, request for
19 certification of basic police training.
20 (Cherry Exhibit 2, request for
21 certification of basic police training,
22 marked for identification, as of this
23 date.)24 **Q. I placed in front of Mr. Cherry**
25 **what has now been marked as Cherry Exhibit 2,**

1 **Cherry**
2 **it is a one-page exhibit that has a Bates**
3 **number of 5462 at the bottom.**

4 **Mr. Cherry, do you recognize the**
5 **document that has been marked as Cherry**
6 **Exhibit 2?**

7 A. Yes.

8 **Q. What is this document?**

9 A. This is a document from the
10 training division certifying my basic police
11 training.

12 **Q. Do you recognize the handwriting**
13 **on this document?**

14 A. Yes.

15 **Q. Let me start with the top half**
16 **that is written, it looks like all caps up to**
17 **the line that says from the top down to the**
18 **line that says rank and date of employment?**

19 A. Okay.

20 **Q. Do you see that section?**

21 A. Yes.

22 **Q. Whose handwriting is that?**

23 A. That is my handwriting.

24 **Q. If you look at rank, what did you**
25 **write there?**

1 **Cherry**

2 A. John P. Hunter.

3 **Q. And who is Mr. Hunter?**

4 A. He was a deputy inspector in the
5 training bureau.

6 **Q. Why were you getting this**
7 **certification certificate?**

8 A. I believe this was given to me
9 when I was a seasonal police officer with the
10 New York State Park Police, they required this
11 as part of their investigation.

12 **Q. Is this something that you**
13 **submitted to them or was it something that**
14 **Nassau County sent to them?**

15 MR. NOVIKOFF: Objection.

16 A. The State Park Police asked me to
17 get this. Part of their requirements.

18 **Q. Now, if you look at the part on**
19 **the bottom, the typed part that starts**
20 **Detective Patrick J. Cherry, do you see that?**

21 A. Yes.

22 **Q. It says Detective Patrick J.**
23 **Cherry, serial 4823, do you see that?**

24 A. Yes.

25 **Q. What is 4823?**

1 **Cherry**

2 A. Detective retired.

3 **Q. That was your rank upon retiring?**

4 A. Detective.

5 **Q. That is what you currently have**
6 **now as a rank, retired detective?**

7 A. Well, I am not in the Police
8 Department any more so I don't really have a
9 rank, but I indicated that I was detective who
10 was retired.

11 **Q. So you don't currently have a**
12 **rank, so you are currently a civilian?**

13 A. Civilian, yes.

14 **Q. Then date of employment, what does**
15 **that mean?**

16 A. That is the date that I was sworn
17 into the Police Department, first day on the
18 job.

19 **Q. That is done prior to going into**
20 **the academy?**

21 A. Yes.

22 **Q. Now if you look at the deputy**
23 **inspector, do you recognize that name?**

24 A. Yes.

25 **Q. Who is that?**

1 **Cherry**

2 A. That is my serial number.

3 **Q. Is that also known as a shield**
4 **number?**

5 A. No, that is like my permanent
6 number at the Police Department. Shield
7 number is different.

8 **Q. Did you have a shield number when**
9 **you worked for the Nassau County Police**
10 **Department?**

11 A. Yes, I did.

12 **Q. What was your shield number?**

13 A. My detective shield number was
14 222.

15 **Q. Did you have a shield number when**
16 **you worked as a police officer at Ocean Beach?**

17 A. Yes.

18 **Q. What shield number were you at**
19 **Ocean Beach?**

20 A. I believe it was 426 I believe.

21 **Q. Did you have a serial number at**
22 **Ocean Beach?**

23 A. Not that I know of.

24 **Q. It says here that you retired from**
25 **the Nassau County Police Department on May 3,**

1 Cherry
 2 **2001. Do you see that?**
 3 A. Yes.
 4 **Q. Is that accurate?**
 5 A. Yes, it is.
 6 **Q. Next sentence says he was**
 7 **certified as a police officer on January 19,**
 8 **1971. Do you see that?**
 9 A. Yes.
 10 **Q. What does that mean to be**
 11 **certified as a police officer?**
 12 MR. NOVIKOFF: Objection. You can
 13 answer.
 14 A. That means that I completed the
 15 proper training as required by the Municipal
 16 Police Chief's Counsel of the State of New
 17 York.
 18 **Q. Do you know what that training**
 19 **consisted of?**
 20 A. It was -- I completed the Nassau
 21 County Police Academy and everything we did in
 22 the Police Academy, I am not sure exactly, it
 23 consisted of a lot of things.
 24 **Q. Did it consist of anything outside**
 25 **of the training at the Police Academy?**

1 Cherry
 2 A. No.
 3 **Q. Were you required to take any**
 4 **tests through civil service to become a police**
 5 **officer?**
 6 A. Yes.
 7 **Q. In Nassau County?**
 8 A. Yes, that was prior to being
 9 appointed, yes.
 10 **Q. So you couldn't be appointed**
 11 **unless you passed the test for civil service?**
 12 A. That is correct.
 13 **Q. And what were the tests that you**
 14 **were required to take to be appointed in**
 15 **Nassau County at the time that you were**
 16 **appointed?**
 17 MR. NOVIKOFF: Objection. You may
 18 answer.
 19 A. A written test, psychological
 20 test, physical agility test, and a medical.
 21 **Q. Were you required to take a**
 22 **polygraph?**
 23 A. No.
 24 **Q. Once you were, you had passed**
 25 **those tests -- strike that.**

1 Cherry
 2 **Who administered those tests?**
 3 A. Nassau County Civil Service.
 4 **Q. After you passed those tests**
 5 **administered by Nassau County Civil Service**
 6 **and you had graduated from the academy, then**
 7 **you were certified to be a police officer in**
 8 **Nassau County?**
 9 A. I believe so, yes.
 10 **Q. At that point in time once you**
 11 **passed all the tests and you graduated the**
 12 **Police Academy were you certified to be a**
 13 **police officer in any other place other than**
 14 **for Nassau County?**
 15 A. I don't know.
 16 **Q. For example could you have just**
 17 **gone and worked for the Suffolk County Police**
 18 **Department without taking any further tests,**
 19 **without going to any further academy?**
 20 MR. NOVIKOFF: Objection. You can
 21 answer.
 22 A. No, probably not.
 23 **Q. Why not?**
 24 A. I don't think they have a lateral
 25 transfer.

1 Cherry
 2 **Q. So you would need to take**
 3 **additional tests?**
 4 A. Yes.
 5 **Q. Would you have had to go to**
 6 **another academy?**
 7 A. I don't know what their
 8 requirements would be on that. Probably.
 9 **Q. How about would you have been able**
 10 **to go work for a town police department within**
 11 **Nassau County?**
 12 MR. NOVIKOFF: Objection. You can
 13 answer.
 14 A. I believe if you -- I believe they
 15 took off -- the town's took off the same list.
 16 I know people came from towns to Nassau. I
 17 never heard of a person going from Nassau to a
 18 village.
 19 **Q. Do you know whether the people**
 20 **that went from town to Nassau had to take any**
 21 **additional test?**
 22 MR. NOVIKOFF: Objection.
 23 A. I know the village took over -- I
 24 don't know for sure in civil service. I know
 25 that Nassau County Police took over a number

1 Cherry
 2 of villages and absorbed those officers into
 3 the Police Department without any further
 4 tests or qualifications.
 5 **Q. I am talking now about town police**
 6 **departments as opposed to a village police**
 7 **department in Nassau County, same thing?**
 8 MR. NOVIKOFF: Objection. You can
 9 answer.
 10 A. Town and village, yes, same thing.
 11 **Q. Is there a difference between a**
 12 **town and a village to your knowledge in Nassau**
 13 **County?**
 14 MR. NOVIKOFF: Objection.
 15 A. Yes. But there is -- well, Nassau
 16 is a little different, there is no town police
 17 departments like -- I don't know if -- yes,
 18 there is town police departments in Suffolk
 19 County. But there is no town police
 20 departments in Nassau, there is just village
 21 police departments or city police departments.
 22 **Q. So it is village, city, county?**
 23 A. Yes.
 24 **Q. To your knowledge could you have**
 25 **worked for any of those three entities, either**

1 Cherry
 2 A. I don't know. I don't know of
 3 anybody that ever went from a county to a
 4 village.
 5 **Q. I am not talking about a county to**
 6 **village. I am talking about going from Nassau**
 7 **County Police Department to Suffolk County**
 8 **Police Department?**
 9 MR. NOVIKOFF: Objection.
 10 A. No. I don't believe you can.
 11 **Q. That is because you have to take**
 12 **additional tests; is that correct?**
 13 MR. NOVIKOFF: Objection.
 14 A. You have to take a test for the
 15 Suffolk County Police Department.
 16 **Q. Now my question is do you know**
 17 **whether you as a Nassau County Police Officer**
 18 **could have gone to work at a village police**
 19 **department within Suffolk County without**
 20 **taking any additional tests?**
 21 MR. NOVIKOFF: Objection.
 22 A. I don't know.
 23 **Q. You didn't know at the time or you**
 24 **don't know now?**
 25 A. Well I know now --

1 Cherry
 2 **a town police -- strike that -- either a city**
 3 **police department, a village police department**
 4 **or Nassau County Police Department once you**
 5 **had passed the Nassau County Civil Service**
 6 **test and graduated the academy?**
 7 MR. NOVIKOFF: Objection.
 8 A. Yes. I mean I guess yes, you
 9 could.
 10 MR. NOVIKOFF: Don't guess.
 11 A. Well, usually you pick where you
 12 want to work before you went to the academy.
 13 If you wanted to work for the village, the
 14 town -- the village or the county. But Nassau
 15 had absorbed some of the villages and their
 16 officers went on Nassau County Police
 17 Department without taking any additional
 18 tests.
 19 **Q. So it was your understanding that**
 20 **that could have happened without passing a**
 21 **test, but that you as a Nassau County Police**
 22 **Officer couldn't have gone to work in Suffolk**
 23 **County Police Department without taking**
 24 **additional tests; is that correct?**
 25 MR. NOVIKOFF: Objection.

1 Cherry
 2 MR. NOVIKOFF: Objection. You can
 3 answer.
 4 A. I know now, but I didn't know at
 5 the time that I was hired by Ocean Beach.
 6 **Q. What is your knowledge now as to**
 7 **whether that was permissible?**
 8 MR. NOVIKOFF: Objection.
 9 A. Now I know you have to go through
 10 the civil service, Suffolk County Civil
 11 Service and take their required tests.
 12 **Q. When did you learn that**
 13 **requirement?**
 14 A. Probably 2005.
 15 **Q. How did you learn that**
 16 **requirement?**
 17 A. Civil service came down --
 18 apparently civil service came down and advised
 19 the Village that they had to go -- police
 20 officers had to go through the civil service
 21 requirements.
 22 **Q. My question is a little bit**
 23 **different. My question is how did you learn**
 24 **about it?**
 25 A. I guess I learned through the

<p style="text-align: right;">Page 110</p> <p>1 Cherry</p> <p>2 Police Department, I am not sure, either the</p> <p>3 chief or George said all the guys had to go</p> <p>4 through the civil service requirements.</p> <p>5 Q. That was in 2005?</p> <p>6 A. Yes.</p> <p>7 Q. When did you start working at</p> <p>8 Ocean Beach?</p> <p>9 A. May 2004.</p> <p>10 Q. So at no point during 2004 did you</p> <p>11 learn of this requirement?</p> <p>12 A. I don't believe so, no.</p> <p>13 Q. What tests to your understanding</p> <p>14 were required to be certified in Suffolk</p> <p>15 County as a police officer?</p> <p>16 MR. NOVIKOFF: Objection.</p> <p>17 A. I believe you have to go take a</p> <p>18 physical agility, psychological and a medical.</p> <p>19 Q. How about a polygraph, are you</p> <p>20 aware of that requirement?</p> <p>21 A. Yes, I think there is a polygraph.</p> <p>22 Q. And you hadn't taken those tests</p> <p>23 for Suffolk County; is that correct?</p> <p>24 A. No, sir.</p> <p>25 Q. Sitting here today have you taken</p>	<p style="text-align: right;">Page 112</p> <p>1 Cherry</p> <p>2 were when you retired from Nassau; is that</p> <p>3 correct?</p> <p>4 MR. NOVIKOFF: Objection.</p> <p>5 A. Correct. I believe when I was</p> <p>6 hired by -- no, I believe -- well, I was hired</p> <p>7 by Ocean Beach as a police officer at the time</p> <p>8 in 2004.</p> <p>9 Q. Were you certified to be a police</p> <p>10 officer in Ocean Beach in 2004 when you were</p> <p>11 hired?</p> <p>12 MR. NOVIKOFF: Objection.</p> <p>13 A. What do you mean by certified;</p> <p>14 certified by Suffolk County?</p> <p>15 Q. Certified to work and be paid as a</p> <p>16 police officer working at a village in Suffolk</p> <p>17 County?</p> <p>18 MR. NOVIKOFF: Objection.</p> <p>19 A. I believe I was at that time</p> <p>20 because I was hired.</p> <p>21 Q. What was your belief based on?</p> <p>22 MR. NOVIKOFF: Objection.</p> <p>23 Q. Just by the fact that you were</p> <p>24 hired?</p> <p>25 A. Yes.</p>
<p style="text-align: right;">Page 111</p> <p>1 Cherry</p> <p>2 them at any time up to and including today,</p> <p>3 have you taken these tests that are required</p> <p>4 by Suffolk County at any time?</p> <p>5 A. No, I have not.</p> <p>6 Q. And if you had taken those tests</p> <p>7 and passed them would you be certified to be</p> <p>8 an officer in Suffolk County, or would you</p> <p>9 need to attend the academy as well?</p> <p>10 MR. NOVIKOFF: Objection.</p> <p>11 A. I believe you don't have to attend</p> <p>12 the Suffolk Academy.</p> <p>13 Q. So your understanding was that</p> <p>14 your attendance at the Nassau Police Academy</p> <p>15 would have satisfied the academy requirement,</p> <p>16 but yet you still had to take the other civil</p> <p>17 service tests?</p> <p>18 MR. NOVIKOFF: Objection. You can</p> <p>19 answer.</p> <p>20 A. That is what I believe now, yes.</p> <p>21 Q. And the basis of your belief is</p> <p>22 what you learned in 2005?</p> <p>23 A. Yes, sir.</p> <p>24 Q. So without taking those tests you</p> <p>25 were still a civilian like you testified you</p>	<p style="text-align: right;">Page 113</p> <p>1 Cherry</p> <p>2 Q. Sitting here today do you believe</p> <p>3 that you were certified to be hired as a</p> <p>4 police officer and be paid as a police officer</p> <p>5 in 2004 in Suffolk County?</p> <p>6 MR. NOVIKOFF: Objection.</p> <p>7 A. I was qualified as a police</p> <p>8 officer, however I -- you see I was under the</p> <p>9 impression -- yes, I believe I was hired, I</p> <p>10 was able to be hired at that time. I was</p> <p>11 under the impression that I was hired as a</p> <p>12 police officer.</p> <p>13 Q. I understand what your impression</p> <p>14 was at the time you were hired. I am asking</p> <p>15 you sitting here today with all the knowledge</p> <p>16 that you have today do you believe at the time</p> <p>17 that you were hired to be a police officer</p> <p>18 that you were certified to be hired as a</p> <p>19 police officer and paid as a police officer in</p> <p>20 a village in Suffolk County?</p> <p>21 MR. NOVIKOFF: Note my objection.</p> <p>22 You can answer.</p> <p>23 A. I don't know. I am not sure if</p> <p>24 they were -- if those qualifications were in</p> <p>25 effect in 2004. I was aware that this</p>

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1 Cherry
2 decision was made either early 2005, I don't
3 know if it applied in 2004.
4 **Q. So you didn't know whether Suffolk**
5 **County had the requirements that you testified**
6 **to, the physical agility test, the**
7 **psychological, the medical and the polygraph**
8 **in 2004?**
9 MR. NOVIKOFF: Objection. You can
10 answer.
11 A. I don't know if that was in effect
12 to become a police officer in the Village at
13 that time. Personally I don't know that.
14 **Q. Let's assume that they were in**
15 **effect, take that assumption for this**
16 **question, assuming they were in effect, is it**
17 **your position still that you were certified to**
18 **be hired and paid as a police officer by the**
19 **Village of Ocean Beach in 2004?**
20 MR. NOVIKOFF: Objection. You can
21 answer.
22 A. Assuming what you said, no,
23 probably not.
24 **Q. So assuming what I said is true,**
25 **you were a civilian in 2004 when you were**

1 Cherry
2 would be correct.
3 **Q. Did you have any pistol licenses**
4 **in 2004 when you were hired?**
5 A. Yes, I did.
6 **Q. What licenses did you have?**
7 A. I have a Suffolk County pistol
8 permit.
9 **Q. Any others?**
10 A. No.
11 **Q. When you were hired to be a police**
12 **officer in May of 2004 did you carry a weapon**
13 **when you were a police officer?**
14 A. Yes.
15 **Q. Was the weapon loaded?**
16 A. Yes.
17 **Q. You wore or carried a shield?**
18 A. Yes.
19 **Q. You held yourself out to be a**
20 **police officer?**
21 A. Yes.
22 **Q. You wore a uniform?**
23 A. Yes.
24 **Q. I just want to go back now before**
25 **you worked in Ocean Beach when you were still**

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1 Cherry
2 **working as a police officer in Ocean Beach; is**
3 **that correct?**
4 MR. NOVIKOFF: Objection. You can
5 answer that.
6 A. Assuming what you said, yes,
7 probably.
8 **Q. Well, what do you mean by**
9 **probably?**
10 A. Well, if I was not a police
11 officer what would I be?
12 **Q. So the answer is yes; not yes**
13 **probably?**
14 MR. NOVIKOFF: Objection. His
15 answer is his answer.
16 **Q. I am asking you yes or no whether**
17 **assuming that the tests that you testified to**
18 **before were a requirement in 2004, at the time**
19 **that you were hired as a police officer and**
20 **paid as a police officer in 2004 you actually**
21 **were a civilian in Suffolk County; is that**
22 **correct?**
23 MR. NOVIKOFF: Objection. You can
24 answer.
25 A. Based on your assumption that

1 Cherry
2 **employed at Nassau County, why don't you walk**
3 **me through the titles that you had starting**
4 **when you started and ended in 1970?**
5 A. I was sworn in as a police
6 officer. I was -- just want the titles?
7 **Q. Your titles and precincts if that**
8 **applies?**
9 A. I was assigned to First Precinct.
10 While I was at the First Precinct I was
11 temporarily assigned to the Firearms Training
12 Bureau as an instructor, and that would be
13 when a class was in effect. When the class
14 was over I would go back to the precinct. I
15 went back and forth several times before in
16 1974 I was transferred from the First Precinct
17 to the Narcotics Bureau.
18 I was in the Narcotics Bureau for
19 two years assigned to the Strike Force which
20 was like a Narcotics Anti-Crime Unit. And in
21 197 -- May of '76 I was promoted to detective.
22 I stayed in the Narcotics Bureau until my
23 retirement in 2001 as a detective.
24 **Q. During your time that you were**
25 **employed either as a police officer or a**

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Page 120

1 **Cherry**
 2 **detective or a firearms instructor with Nassau**
 3 **County --**
 4 A. The title was still police officer
 5 assigned to the Firearms Training Bureau.
 6 **Q. Just so we are clear, the titles**
 7 **that you had in Nassau County were police**
 8 **officer and detective; is that correct?**
 9 A. Two titles, correct.
 10 **Q. So at any time when you were a**
 11 **police officer or a detective did you ever**
 12 **work for Internal Affairs?**
 13 A. No.
 14 **Q. Does Nassau County have an**
 15 **Internal Affairs Bureau or Department?**
 16 A. Yes.
 17 **Q. And what is Internal Affairs in**
 18 **the Nassau County Police Department?**
 19 A. They investigate allegations
 20 against police officers of wrongdoing in the
 21 department.
 22 **Q. Were you ever trained in Internal**
 23 **Affairs?**
 24 A. No, sir.
 25 **Q. Did you ever have any experience**

1 **Cherry**
 2 **police officer?**
 3 A. As a detective.
 4 **Q. How many investigations of**
 5 **assaults did you undertake when you were in**
 6 **Nassau County?**
 7 A. In total maybe about a dozen.
 8 **Q. And did any of those**
 9 **investigations of assault involve allegations**
 10 **that a police officer assaulted somebody?**
 11 A. No.
 12 **Q. They were all either assaults**
 13 **between civilians or an assault by a civilian**
 14 **on a police officer; is that correct?**
 15 A. That is correct.
 16 **Q. So in your 31 years you**
 17 **investigated approximately 12 assaults; is**
 18 **that correct?**
 19 A. Yes.
 20 MR. NOVIKOFF: Objection.
 21 A. Roughly.
 22 **Q. When you were employed with Nassau**
 23 **County that was a full-time position; is that**
 24 **correct?**
 25 A. Yes.

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Page 121

1 **Cherry**
 2 **during the times that you were a detective or**
 3 **police officer in Nassau County investigating**
 4 **allegations of misconduct by the police**
 5 **officers?**
 6 A. No.
 7 **Q. Did you ever have any experience**
 8 **investigating allegations of assault?**
 9 A. Yes.
 10 **Q. And what did that experience**
 11 **involve?**
 12 A. As a police officer I investigated
 13 assaults that occurred in a precinct in my
 14 area of patrol on assignment or coming across
 15 it. As a detective I was involved in not a
 16 lot of investigations involving assaults, but
 17 occasionally a police officer would be
 18 assaulted as part of a narcotics
 19 investigation, and I was involved in just
 20 taking statements and investigating the
 21 assault and resisting arrest or whatever was
 22 involved. And on several occasions I was
 23 assigned to investigate assaults with local
 24 precincts for the homicide squad.
 25 **Q. While you were a detective or a**

1 **Cherry**
 2 **Q. Did you work any other jobs while**
 3 **you were employed as a Nassau County Police**
 4 **Officer or detective?**
 5 A. No.
 6 **Q. Never worked security anywhere as**
 7 **a bouncer or any other part-time jobs?**
 8 A. No, sir.
 9 **Q. When you were with the Nassau**
 10 **County Police Department what tours did you**
 11 **work?**
 12 A. I worked -- as a uniform officer I
 13 worked around the clock, 8 to 4 and 4 to 12
 14 and midnight to 8 a.m. As a detective I
 15 primarily worked 8 to 4's and 4 to 12's. On
 16 special assignments you may work a midnight
 17 tour depending on the needs of the unit.
 18 **Q. I know that you testified that you**
 19 **never had been disciplined while you were at**
 20 **Nassau County, but had you ever been**
 21 **investigated by Internal Affairs?**
 22 A. Not to my knowledge.
 23 MR. NOVIKOFF: That's why its
 24 Internal Affairs.
 25 **Q. And you retired in what year from**

<p style="text-align: right;">Page 122</p> <p>1 Cherry</p> <p>2 the Nassau County Police Department?</p> <p>3 A. 2001.</p> <p>4 Q. And why did you retire?</p> <p>5 A. I just -- you know, I figured I</p> <p>6 did 31 years, I was ready to retire and</p> <p>7 voluntarily retired.</p> <p>8 Q. Subsequent to your retirement what</p> <p>9 was the first place that you were employed?</p> <p>10 A. The New York State Park Police.</p> <p>11 Q. And what was your title with the</p> <p>12 New York State Park Police?</p> <p>13 A. Police officer.</p> <p>14 Q. Was that a full-time position?</p> <p>15 A. No, seasonal position.</p> <p>16 Q. Where were you -- did you report</p> <p>17 into a certain precinct or headquarters?</p> <p>18 A. I was assigned to the Jones Beach</p> <p>19 Barracks.</p> <p>20 Q. I assume that is in Jones Beach?</p> <p>21 A. Yes, Jones Beach State Park.</p> <p>22 Q. That is in Nassau County; is that</p> <p>23 correct?</p> <p>24 A. Yes. But the region I was</p> <p>25 assigned to encompassed Nassau and Suffolk.</p>	<p style="text-align: right;">Page 124</p> <p>1 Cherry</p> <p>2 those were sufficient to be certified to work</p> <p>3 as a seasonal police officer for the New York</p> <p>4 State Park Police?</p> <p>5 MR. NOVIKOFF: Objection.</p> <p>6 A. That is correct.</p> <p>7 Q. Did you have any additional</p> <p>8 training when you worked at the New York State</p> <p>9 Park Police?</p> <p>10 A. Yes. We had two weeks of</p> <p>11 training.</p> <p>12 Q. What type of training was that?</p> <p>13 A. Going over Penal Law, firearms</p> <p>14 training, first aid training. Their basic</p> <p>15 procedures and form training.</p> <p>16 Q. You worked there as a police</p> <p>17 officer?</p> <p>18 A. Yes.</p> <p>19 Q. You were not a detective there;</p> <p>20 correct?</p> <p>21 A. No, sir.</p> <p>22 Q. That is a position that you are</p> <p>23 paid by the State?</p> <p>24 A. Correct.</p> <p>25 Q. What was the process that you</p>
<p style="text-align: right;">Page 123</p> <p>1 Cherry</p> <p>2 Q. When you say a seasonal officer</p> <p>3 with the New York State Park Police, was the</p> <p>4 seasonal defined in the same way as you</p> <p>5 defined it before?</p> <p>6 A. Basically it was a summer season,</p> <p>7 they went from April to mid September.</p> <p>8 Q. And how many hours a week were you</p> <p>9 working the first year as a seasonal police</p> <p>10 officer with the New York State Park Police?</p> <p>11 A. I would say I worked three tours,</p> <p>12 about 24 hours the first year and probably 36</p> <p>13 hours the second year. You can work as many</p> <p>14 days as you wanted to.</p> <p>15 Q. What years did you work there as a</p> <p>16 seasonal police officer?</p> <p>17 A. 2002 and 2003.</p> <p>18 Q. Did you ever take any additional</p> <p>19 tests to be a seasonal police officer with the</p> <p>20 New York State Park Police?</p> <p>21 A. No.</p> <p>22 MR. NOVIKOFF: Objection.</p> <p>23 Q. So the tests that you testified to</p> <p>24 that you passed in Nassau County and the</p> <p>25 graduation in Nassau County Police Academy,</p>	<p style="text-align: right;">Page 125</p> <p>1 Cherry</p> <p>2 undertook to get that job?</p> <p>3 A. There was an application to fill</p> <p>4 out, you had an interview, and you had to get</p> <p>5 a medical form signed by your physician saying</p> <p>6 you were capable of performing duties.</p> <p>7 Q. So you had it from your own</p> <p>8 physician or you had --</p> <p>9 A. No. You had a form provided by</p> <p>10 the State Park Police to take to your</p> <p>11 physician to have signed.</p> <p>12 Q. How much -- did they pay you on an</p> <p>13 hourly rate?</p> <p>14 A. Yes.</p> <p>15 Q. How much was the hourly rate?</p> <p>16 A. \$16.67.</p> <p>17 Q. For both seasons, '02 and '03?</p> <p>18 A. I believe so, yes.</p> <p>19 Q. And while you were -- let's talk</p> <p>20 about during the season, during '02 and '03,</p> <p>21 did you work any other jobs during the season?</p> <p>22 A. No.</p> <p>23 Q. How about on the off season, using</p> <p>24 the April to September timeframe defined as a</p> <p>25 season in this context, did you work any jobs</p>

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1 Cherry
 2 in the off season during those two years?
 3 A. No.
 4 Q. So during the period that you were
 5 a seasonal police officer for the New York
 6 State Park Police you didn't work at Ocean
 7 Beach at all; correct?
 8 A. No.
 9 Q. Did you carry a weapon when you
 10 were a seasonal police officer with the New
 11 York State Park Police?
 12 A. Yes.
 13 Q. Did you have a shield?
 14 A. Yes.
 15 Q. Do you recall what your shield
 16 number was?
 17 A. 55.
 18 Q. During your time that you were
 19 employed by the New York State Park Police
 20 were you ever disciplined?
 21 A. No.
 22 Q. Were you ever investigated by
 23 Internal Affairs?
 24 A. No.
 25 Q. Did you ever have any claim or

1 Cherry
 2 Q. Who employed you as a patrol
 3 officer?
 4 A. The New York State Park Police.
 5 You are talking about the State Park Police
 6 now, correct, the 2002, 2003 season?
 7 Q. I was talking about the period
 8 after that, but let's go back to what your
 9 duties were with the New York State Park
 10 Police. What were your duties when you were a
 11 seasonal officer with the New York State Park
 12 Police?
 13 A. To patrol the parks, enforce the
 14 laws of New York State, handle accident
 15 scenes, medical emergencies, crowd control.
 16 And investigate -- additional investigation on
 17 incidents that occurred down there, crimes and
 18 violations.
 19 Q. Anything else?
 20 A. That is basically the police
 21 patrol function.
 22 Q. What do you mean by an additional
 23 investigation of incidents?
 24 A. When you had a crime committed
 25 down there or an accident investigation you do

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1 Cherry
 2 allegations brought against you in your
 3 position as a seasonal police officer?
 4 MR. NOVIKOFF: Objection.
 5 A. No.
 6 Q. Why did you leave your employment
 7 with the State Park Police?
 8 A. The Park Police terminated their
 9 seasonal program.
 10 Q. In the off season between '02 and
 11 '03 did you collect unemployment?
 12 A. No, I don't believe so that year.
 13 Q. How about after the '03 season,
 14 did you collect unemployment?
 15 A. Yes, I did.
 16 Q. Now, there came a point in time
 17 that you were -- strike that.
 18 What was the job that you had
 19 subsequent to the end of the '03 season when
 20 you were a seasonal police officer with the
 21 State Park Police?
 22 A. I was a patrol officer.
 23 Q. Where were you a patrol officer?
 24 A. The Long Island region which
 25 consists of Nassau and Suffolk Counties.

1 Cherry
 2 the preliminary investigation, take a
 3 statement from the witnesses or the victim.
 4 And if it required any further investigation
 5 the detectives would follow up on it and you
 6 would have to submit that at the end of the
 7 tour and the sergeant has to review it.
 8 Q. So your role was just to take the
 9 statements from the witnesses and/or the
 10 victims?
 11 A. Yes.
 12 Q. And if there was any subsequent or
 13 further investigation, that was out of your
 14 hands, that was with the detective or the
 15 sergeant?
 16 A. It would depend. They only had a
 17 limited number of detectives, I think three to
 18 four. When somebody had a robbery down there,
 19 the detectives were not available, we ended up
 20 taking statements from the victims and
 21 witnesses involved, doing the background on
 22 the subjects. I believe there were four
 23 subjects involved in the robbery. So we did
 24 the complete investigation, myself and several
 25 other officers involving the robbery.

1 Cherry
 2 I also had a case where a man
 3 drowned his dog in the beach, it was a hot
 4 Sunday afternoon, and I handled that
 5 investigation also, taking statements from
 6 multiple witnesses and doing back up witness
 7 investigation and taking statements, arranging
 8 for an autopsy on the crime scene on the dog.
 9 So I got involved in that.
 10 **Q. And other than those two**
 11 **investigations did you do any other**
 12 **investigation in your two years as a seasonal**
 13 **police officer in the Park Police?**
 14 A. Other than the initial
 15 investigation that I stated, no.
 16 **Q. Did you ever discharge your weapon**
 17 **as a seasonal police officer in the State Park**
 18 **Police?**
 19 A. No.
 20 **Q. Have you ever discharged your**
 21 **weapon as a Nassau County Police Officer?**
 22 A. No.
 23 **Q. When you were a seasonal police**
 24 **officer with the State Park Police did you**
 25 **issue any summonses?**

1 Cherry
 2 A. Yes.
 3 **Q. Did you make any arrests?**
 4 A. Yes.
 5 **Q. So you had authority to do those**
 6 **two things?**
 7 A. Yes.
 8 **Q. Did you ever testify in connection**
 9 **with any of those arrests?**
 10 A. Yes.
 11 **Q. And that was in the subsequent**
 12 **proceeding with respect to the arrests?**
 13 A. Correct.
 14 **Q. Is that in court?**
 15 A. Yes. Grand Jury.
 16 **Q. Grand Jury?**
 17 A. Yes.
 18 **Q. Did you ever testify during the**
 19 **trial of any of those arrests?**
 20 A. No.
 21 **Q. Have you ever testified at a**
 22 **trial?**
 23 A. Yes.
 24 **Q. How many times?**
 25 A. I would say about four or five, at

1 Cherry
 2 trials.
 3 **Q. At trials?**
 4 A. Yes, four or five.
 5 **Q. Which entity were you employed by**
 6 **at the time that you testified at trial?**
 7 A. Nassau County Police Department.
 8 **Q. So you never testified at trial**
 9 **with respect to your employment at the Park**
 10 **Police or at Ocean Beach?**
 11 A. No.
 12 **Q. What was, we will go back to the**
 13 **question that I asked before, what was the job**
 14 **that you had after the State Park Police job**
 15 **which ended at the end of the season '03?**
 16 A. Yes. The next job I had was at
 17 Ocean Beach in the season of 2004.
 18 **Q. Did you work any jobs between the**
 19 **end of the season of '03 and the beginning of**
 20 **the season of '04?**
 21 A. No.
 22 **Q. But you collected unemployment**
 23 **during that period; is that correct?**
 24 A. That period, yes.
 25 **Q. When did you -- strike that.**

1 Cherry
 2 **How learn about the job at Ocean**
 3 **Beach?**
 4 A. When I first retired George asked
 5 me, George Hesse asked me if I was interested
 6 in working for Ocean Beach and I said no, I
 7 wasn't planning on working, so I said no.
 8 When I left the State Park Police he again
 9 asked me if I was interested in working at
 10 Ocean Beach, I said yes, I would give it a
 11 shot.
 12 **Q. How did you know Hesse at the time**
 13 **that you retired from the Nassau County job?**
 14 A. My son was working for Ocean
 15 Beach, I met George, he stopped by the house
 16 once or twice to either pick up my son or drop
 17 him off, and I met George that way. And when
 18 I first retired he knew I was retiring from
 19 what my son told him apparently, and he asked
 20 me if I was interested in going to the Ocean
 21 Beach Police Department.
 22 **Q. So your son maintained contact**
 23 **with George Hesse after he left Ocean Beach?**
 24 A. Yes, occasionally.
 25 **Q. So by the time you retired from**

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1 Cherry
2 Nassau County your son had already started
3 working in New York; is that correct?

4 A. Yes.

5 Q. And did George Hesse contact you
6 originally when you retired from Nassau
7 County?

8 A. He was over the house dropping my
9 son off from work and he knew I was retired,
10 he said are you interested in coming to work
11 for Ocean Beach and at that point I said no.

12 Q. So at the time that you retired in
13 '01 your son was working in Ocean Beach?

14 A. No, he was not.

15 Q. So then what was George Hesse
16 doing at your house?

17 A. I guess he stopped by the house to
18 see Patrick.

19 Q. And Patrick was living with you at
20 the time?

21 A. Yes.

22 Q. Do you recall what he said to you
23 in connection with possibly working at Ocean
24 Beach?

25 A. As I said he knew I was retiring,

1 Cherry

2 be over -- I had never been to Ocean Beach
3 before I went to work there, but I don't think
4 so.

5 Q. Was George at your house at any
6 point in time other than that one incident
7 that you testified to before you left the
8 position with the Park Police?

9 MR. NOVIKOFF: Objection. You can
10 answer.

11 A. I don't recall, he may have been,
12 but I don't recall any specific time.

13 Q. You said there may have been those
14 couple of conversations that you had with him,
15 two or three, do you recall any details of any
16 conversations you actually had with him?

17 MR. NOVIKOFF: Objection.

18 A. No.

19 Q. Other than for the one time that
20 you testified to when he was over your house
21 and asked you to come work at Ocean Beach, has
22 George ever been at your house on any other
23 occasion?

24 A. Since then?

25 Q. At any time either before then or

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1 Cherry
2 he said would be interested in coming to work
3 at Ocean Beach. At that time I said no, I
4 wasn't interested.

5 Q. How come?

6 A. I wasn't going to work.

7 Q. Do you recall when that
8 conversation happened?

9 A. It had to be shortly after --
10 either just before I retired or slightly after
11 in 2001, in May of 2001.

12 Q. At any point in time between that
13 conversation and when you ended your work with
14 the State Park Police had you discussed with
15 George Hesse the possibility of working at
16 Ocean Beach?

17 A. No.

18 Q. Had you had any contact with
19 George Hesse during that period?

20 A. I don't think I -- I may have once
21 or twice, but I don't recall -- I don't
22 believe I had a lot of contact with him. I
23 may have saw him or talked to him once or
24 twice during that two year period. My son
25 didn't work there any more, I had no reason to

1 Cherry
2 after that?

3 A. Yes, he has been to the house
4 several occasions.

5 Q. Before then or after?

6 A. After then.

7 Q. Had he been to your house before
8 then?

9 A. Before 2001?

10 Q. Yes.

11 A. Yes. He may have been to see my
12 son.

13 Q. How many times?

14 A. That is when he dropped him off
15 occasionally from work, or picked him up going
16 to work. So it was not often, it was just
17 occasionally he would stop by. He has been to
18 the house a number of times.

19 Q. Approximately how many?

20 A. To pick up my son, I couldn't
21 venture a guess, he has been there.

22 Q. More than ten?

23 A. I wouldn't say -- maybe, maybe
24 not. I don't know.

25 Q. How about after 2001 how many

<p style="text-align: right;">Page 138</p> <p>1 Cherry</p> <p>2 times has he been to your house?</p> <p>3 A. Since I was working there in 2004</p> <p>4 he picked me up a couple of times to go to</p> <p>5 work or dropped me off or he just stopped by,</p> <p>6 you know, say hello.</p> <p>7 Q. So other than for picking you up</p> <p>8 or dropping you off he would also stop by</p> <p>9 socially?</p> <p>10 A. Yes, occasionally. Maybe three or</p> <p>11 four times all together.</p> <p>12 Q. And after the time in '01 where he</p> <p>13 asked you to come work there when was the next</p> <p>14 time you had any discussions with George Hesse</p> <p>15 about the possibility of working at the beach?</p> <p>16 A. It was in the papers that they</p> <p>17 were not going to bring us back for, the New</p> <p>18 York State Park Police was not going to bring</p> <p>19 us back for the 2004 season. We had -- he</p> <p>20 asked me if I was interested. Sometime in</p> <p>21 the early -- before -- it might have been</p> <p>22 around -- he asked me if I was interested in,</p> <p>23 since they were not going to have -- I wasn't</p> <p>24 going to be going back with the New York State</p> <p>25 Park Police, if I wanted to come and work for</p>	<p style="text-align: right;">Page 140</p> <p>1 Cherry</p> <p>2 than for an end of season party?</p> <p>3 A. No.</p> <p>4 Q. The end of season party, is that</p> <p>5 something for the Police Department of Ocean</p> <p>6 Beach?</p> <p>7 A. Yes.</p> <p>8 Q. Everyone who is employed by the</p> <p>9 Police Department is invited to that?</p> <p>10 A. Yes.</p> <p>11 Q. How did you receive an invite to</p> <p>12 that?</p> <p>13 A. Usually puts a notice up on the</p> <p>14 bulletin board in the office.</p> <p>15 Q. Who paid for that?</p> <p>16 A. I don't know.</p> <p>17 MR. NOVIKOFF: Objection.</p> <p>18 Q. You don't know how that party was</p> <p>19 funded?</p> <p>20 MR. NOVIKOFF: Objection.</p> <p>21 A. No.</p> <p>22 Q. You didn't pay anything for it,</p> <p>23 did you?</p> <p>24 A. No.</p> <p>25 Q. Let's go back now to the time in</p>
<p style="text-align: right;">Page 139</p> <p>1 Cherry</p> <p>2 Ocean Beach.</p> <p>3 Q. Do you recall when that was after</p> <p>4 the paper reported that you were not coming</p> <p>5 back?</p> <p>6 A. It was probably April or May.</p> <p>7 Q. Of 2004?</p> <p>8 A. Yes, I believe so to the best of</p> <p>9 my recollection.</p> <p>10 Q. Have you ever been at George</p> <p>11 Hesse's house?</p> <p>12 A. Yes.</p> <p>13 Q. How many times?</p> <p>14 A. I have been there four times.</p> <p>15 Mostly for end of season parties.</p> <p>16 Q. At his house?</p> <p>17 A. Yes.</p> <p>18 Q. And what years were you there for</p> <p>19 the end of season parties at his house?</p> <p>20 A. 2004. I believe it was 2004,</p> <p>21 2005, usually have an end of the season party.</p> <p>22 I am not sure because Chief Paradiso had one</p> <p>23 at his house. I would say I have been to</p> <p>24 George's house about four times.</p> <p>25 Q. Have you ever been there other</p>	<p style="text-align: right;">Page 141</p> <p>1 Cherry</p> <p>2 April or May of '04 when George Hesse --</p> <p>3 George Hesse approached you about the</p> <p>4 possibility of working in Ocean Beach?</p> <p>5 A. I believe so. He didn't approach</p> <p>6 me, he asked me would I be interested in going</p> <p>7 over there, and I said yes.</p> <p>8 Q. Was that a phone conversation, in</p> <p>9 person conversation, through some other means?</p> <p>10 A. I am not sure.</p> <p>11 Q. You don't recall one way or the</p> <p>12 other?</p> <p>13 A. No.</p> <p>14 Q. So you don't recall how he</p> <p>15 approached you about working there?</p> <p>16 MR. NOVIKOFF: Objection.</p> <p>17 A. I don't recall.</p> <p>18 Q. What did he say to you?</p> <p>19 A. Would you be interested in coming</p> <p>20 over to Ocean Beach to work.</p> <p>21 Q. What was your response?</p> <p>22 A. I said yes, I would be.</p> <p>23 Q. And did you fill out any paperwork</p> <p>24 to apply for that position?</p> <p>25 A. I believe I did, yes.</p>

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<p>1 Cherry</p> <p>2 Q. What paperwork did you fill out to</p> <p>3 apply?</p> <p>4 A. I believe it was an application</p> <p>5 form.</p> <p>6 Q. You fill out an application?</p> <p>7 A. I believe so, yes.</p> <p>8 Q. Do you recall when you filled out</p> <p>9 that application?</p> <p>10 A. Probably in early 2004. April or</p> <p>11 May I am not sure of the exact date.</p> <p>12 Q. Where were you when you filled out</p> <p>13 the application?</p> <p>14 A. I went to the station.</p> <p>15 Q. In Ocean Beach?</p> <p>16 A. Yes.</p> <p>17 Q. Who did you submit the application</p> <p>18 to?</p> <p>19 A. Sergeant Hesse.</p> <p>20 Q. He was a sergeant at the Ocean</p> <p>21 Beach Police Department at that time?</p> <p>22 A. Yes.</p> <p>23 Q. How did you learn that he was a</p> <p>24 sergeant?</p> <p>25 MR. NOVIKOFF: Objection.</p>	<p>1 Cherry</p> <p>2 the best of my recollection.</p> <p>3 RQ Q. I would like to mark the record</p> <p>4 here, I don't think we have been produced a</p> <p>5 copy of a written application that Mr. Cherry</p> <p>6 filled out.</p> <p>7 MR. NOVIKOFF: I know that we</p> <p>8 produced 9,000 pages. I cannot represent</p> <p>9 to you that I know what the identity of</p> <p>10 each of one of those are. We will search</p> <p>11 to see what was produced and if you</p> <p>12 requested Mr. Cherry's application I am</p> <p>13 sure it should have been provided as part</p> <p>14 of his personnel file.</p> <p>15 MR. GOODSTADT: Maybe it was</p> <p>16 produced, I have not seen it.</p> <p>17 MR. NOVIKOFF: I would ask you to</p> <p>18 remind me after the deposition and we</p> <p>19 will get it.</p> <p>20 MR. GOODSTADT: We will send you a</p> <p>21 letter.</p> <p>22 MR. NOVIKOFF: Yes.</p> <p>23 Q. Did you submit a resume?</p> <p>24 A. Yes, I did.</p> <p>25 Q. Did they ask you to submit a</p>
Page 143	Page 145
<p>1 Cherry</p> <p>2 A. That was his rank, you know, I</p> <p>3 don't -- somebody told me, he was a sergeant,</p> <p>4 I saw his uniform, he had three stripes on his</p> <p>5 arm.</p> <p>6 Q. Did you know that he was a</p> <p>7 sergeant before you went there to fill out the</p> <p>8 paper?</p> <p>9 A. Yes, my son worked there and he</p> <p>10 was a sergeant when my son worked there.</p> <p>11 Q. Do you know, was the application</p> <p>12 that you filled out, was that an Ocean Beach</p> <p>13 document or was that a Suffolk County</p> <p>14 document?</p> <p>15 MR. NOVIKOFF: The application</p> <p>16 that Hesse filled --</p> <p>17 MR. GOODSTADT: He testified --</p> <p>18 MR. NOVIKOFF: He said the</p> <p>19 application that he filled out. Maybe I</p> <p>20 am wrong.</p> <p>21 Q. The application that you testified</p> <p>22 to that you filled out, was that a document</p> <p>23 for Ocean Beach or was that a document for</p> <p>24 Suffolk County?</p> <p>25 A. I believe it was Ocean Beach. To</p>	<p>1 Cherry</p> <p>2 resume or is that something that you did</p> <p>3 voluntarily?</p> <p>4 A. I just sent it along as part of</p> <p>5 the application.</p> <p>6 Q. What do you mean you sent it</p> <p>7 along?</p> <p>8 A. I provided it, a resume, give them</p> <p>9 some idea of my police background.</p> <p>10 Q. Did you give the resume to</p> <p>11 Sergeant Hesse?</p> <p>12 A. Yes.</p> <p>13 Q. You did that on the same day that</p> <p>14 you filled out the application?</p> <p>15 A. I believe so.</p> <p>16 MR. GOODSTADT: Mark this document</p> <p>17 as Cherry Exhibit 3, resume.</p> <p>18 (Cherry Exhibit 3, resume, marked</p> <p>19 for identification, as of this date.)</p> <p>20 MR. GOODSTADT: Let's take five</p> <p>21 minutes.</p> <p>22 THE VIDEOGRAPHER: The time is</p> <p>23 12:04, we are going off the record.</p> <p>24 (Recess taken.)</p> <p>25 THE VIDEOGRAPHER: The time is</p>

1 Cherry
2 12:12. We are back on the record.
3 **Q. Mr. Cherry, I placed in front of**
4 **you what has been marked as Cherry Exhibit 3,**
5 **a three-page document Bates numbered 4104**
6 **through 4106. Do you recognize this document?**
7 A. Yes.
8 **Q. What is it?**
9 A. Its my resume.
10 **Q. Is this the resume that you**
11 **submitted to Sergeant Hesse in connection with**
12 **your application to the Village of Ocean**
13 **Beach?**
14 A. Yes. It appears to be.
15 **Q. Other than for the application and**
16 **this resume did you submit any other paperwork**
17 **for the Village of Ocean Beach in connection**
18 **with your application for employment there?**
19 A. I think I gave him a copy of my
20 initial police training council certificate.
21 **Q. Anything else?**
22 A. I don't recall. I -- whatever
23 they required I submitted.
24 **Q. Did you submit any documents that**
25 **were produced by civil service, either Suffolk**

1 **Cherry**
2 A. I don't believe so, no.
3 **Q. It was only that one day that you**
4 **did all these tasks as part of the application**
5 **process or was --**
6 A. I would say it was just filling
7 out the application and what these forms with
8 me on that particular day, that was it.
9 **Q. And did there come a point in time**
10 **where you were actually offered a job as a**
11 **police officer?**
12 A. Yes.
13 **Q. When was that?**
14 A. Shortly after I filled out the
15 application I was asked to come down and get
16 sworn in. I don't know the exact date.
17 **Q. Being asked to be sworn in, was**
18 **that the notification process that you had**
19 **been offered a job as a police officer?**
20 A. Yes.
21 **Q. How long after your forms that you**
22 **filled out and your interview did that happen?**
23 A. I am not sure.
24 **Q. Was it days, weeks?**
25 A. Weeks probably.

1 **Cherry**
2 **County or Nassau County?**
3 A. I may have -- I don't know if I
4 submitted this form or not, this form that we
5 had here.
6 MR. NOVIKOFF: Let the record
7 reflect Cherry Exhibit 2.
8 A. I don't know if I submitted a copy
9 of that or not, but I gave my municipal police
10 council certificate.
11 **Q. Did you have an interview for the**
12 **position?**
13 A. With Sergeant Hesse.
14 **Q. Anybody else?**
15 A. No.
16 **Q. How long did that interview last?**
17 A. The whole process between the
18 interview and the filling out the forms, maybe
19 an hour or two.
20 **Q. How long did the interview part**
21 **last?**
22 A. I would say maybe a half hour.
23 **Q. As part of that process did you**
24 **meet with any other employees from the Village**
25 **of Ocean Beach other than for George Hesse?**

1 **Cherry**
2 **Q. Hours?**
3 A. Probably weeks. I am not sure of
4 the exact date that I was sworn in.
5 **Q. How were you asked to come and get**
6 **sworn in, meaning did somebody call you, did**
7 **you get a letter?**
8 A. I believe George, Sergeant Hesse
9 called me and asked me to come in.
10 **Q. Do you know if anybody else had**
11 **any role in the decision to offer you a job as**
12 **a police officer other than from Mr. Hesse?**
13 A. I believe Chief Paradiso had to
14 approve it.
15 **Q. What is your basis for that**
16 **belief?**
17 A. Because he is the chief of the
18 department, I have to go through him.
19 **Q. Do you know whether he actually**
20 **approved it?**
21 A. I don't know.
22 **Q. Do you know whether it was**
23 **actually a requirement that he had to approve**
24 **it?**
25 A. Was there a requirement?

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1 Cherry
 2 Q. Yes.
 3 MR. NOVIKOFF: Note my objection.
 4 A. I don't know if it was a
 5 requirement, but he was the chief of the
 6 department, I would assume that he had the
 7 final say, or had something to do with it.
 8 Q. Prior to that time had you ever
 9 met Chief Paradiso?
 10 A. No.
 11 Q. Had you ever spoken with him?
 12 A. Prior to that time, no.
 13 Q. Had you ever had any
 14 correspondence with Chief Paradiso prior to
 15 the time that you were offered a job at Ocean
 16 Beach?
 17 A. No.
 18 Q. Other than for -- strike that,
 19 your son wasn't working there at the time.
 20 Did you know any other police officers in
 21 Ocean Beach at that time?
 22 MR. NOVIKOFF: Objection. You can
 23 answer.
 24 A. I don't think so, no.
 25 Q. At that time in April or May of

1 Cherry
 2 A. I didn't know that at the time. I
 3 didn't know it was seasonal police officer,
 4 was a classification. I knew it was going to
 5 be just for the summer season, he needed more
 6 people, but I didn't know if I was a
 7 classification, a civil service clarification.
 8 Q. What were your -- strike that.
 9 Did there come a point in time
 10 where you actually went down there and were
 11 sworn in as a police officer?
 12 A. Yes.
 13 Q. When was that?
 14 A. I don't know the exact date.
 15 Q. Do you know what month it was?
 16 A. I am not sure. It had to be
 17 sometime before the season started, but I am
 18 not sure when it started.
 19 Q. How far before the season started
 20 was it, days, weeks, months?
 21 A. It could have been a month, it
 22 could have been a couple of weeks, I am not
 23 sure.
 24 Q. Is there anything that would
 25 refresh your recollection?

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1 Cherry
 2 2004 do you know whether your son had any
 3 communications or correspondence with anyone
 4 at Ocean Beach?
 5 A. No, I don't know. I don't know.
 6 Q. Was he in communication with
 7 George Hesse at that time?
 8 A. I don't know.
 9 Q. And what position were you asked
 10 to come down and be sworn in for?
 11 A. Police officer.
 12 Q. Did you accept the offer?
 13 A. Yes.
 14 Q. On the spot, or did you have to
 15 call him back and say yes, I accept?
 16 A. No, I told him I would come down.
 17 Q. What title was he actually
 18 offering you a job as?
 19 A. Police officer.
 20 Q. Was it full-time police officer,
 21 seasonal, part-time or some other title?
 22 A. Seasonal.
 23 Q. That was the civil service
 24 classification of the job that was being
 25 offered to you?

1 Cherry
 2 A. Yes.
 3 Q. What is that?
 4 A. Probably the -- you signed a book
 5 at the Village office when you got sworn in.
 6 Q. Were any other police officers
 7 sworn in at the same time as you or the same
 8 day as you?
 9 A. I don't believe so.
 10 Q. Who swore you in as a seasonal
 11 police officer at Ocean Beach?
 12 A. I believe it was Mary Minerva, the
 13 Village Administrator.
 14 Q. How long did that process take?
 15 A. It took about five minutes.
 16 Q. You actually went down to Ocean
 17 Beach to do that?
 18 A. Yes.
 19 Q. Where was the ceremony or the
 20 swearing in, where did it take place?
 21 A. Village office.
 22 Q. Was anyone else there other than
 23 you and Ms. Minerva?
 24 A. I believe Sergeant Hesse was
 25 there.

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1 Cherry
 2 **Q. Anyone else?**
 3 A. Not that I know of.
 4 **Q. Had you known Ms. Minerva prior to**
 5 **that swearing in?**
 6 A. No.
 7 **Q. After the swearing in had you had**
 8 **any encounters or correspondence with Ms.**
 9 **Minerva?**
 10 A. Nothing official, no. I mean I
 11 run into her, going to take -- going into the
 12 Village hall and stop in to see her, but
 13 nothing official or anything like that, say
 14 hello.
 15 **Q. You would say hello to her?**
 16 A. Yes.
 17 **Q. She would respond?**
 18 A. Yes.
 19 **Q. You knew who she was?**
 20 A. Yes. She was the Village
 21 administrator in charge of every day
 22 operations of the Village.
 23 **Q. Did you ever have any**
 24 **correspondence or encounters with Mayor**
 25 **Rogers?**

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1 Cherry
 2 A. Other than to say that I met her
 3 also, and I was introduced to her, and just to
 4 say hello. Nothing official. She would come
 5 into the station house occasionally.
 6 **Q. When were you introduced to her?**
 7 A. Sometime after I got employed by
 8 the Village in 2004.
 9 **Q. Was it some kind of official**
 10 **introduction?**
 11 A. No. I just met her on the street,
 12 I was introduced by one of the other officers,
 13 or she came into the station house and I was
 14 introduced to her. There was no formal
 15 introduction.
 16 **Q. How many encounters or**
 17 **correspondence did you have with her?**
 18 A. I had no correspondence. She
 19 would come into the station house occasionally
 20 if there was something going on in the
 21 Village, if we had a power outage she would
 22 come in to find out what was going on. Other
 23 than that if I saw her in the street I would
 24 acknowledge her and say hello.
 25 **Q. About how many times did that**

1 Cherry
 2 **happen?**
 3 A. Maybe a dozen times. You see her
 4 walking down the street, good morning mayor,
 5 something like that. There was no
 6 correspondence at all between me and her.
 7 **Q. When you were hired she was the**
 8 **current mayor at the time?**
 9 A. Yes, I believe so.
 10 **Q. Do you know whether she held any**
 11 **title with the Police Department?**
 12 A. No. I don't know one way or the
 13 other.
 14 **Q. Do you know whether the Village of**
 15 **Ocean Beach had a police commissioner?**
 16 A. Not to my knowledge.
 17 **Q. Did you ever see any village**
 18 **letterhead at the time that you worked there?**
 19 A. Village letterhead.
 20 **Q. Yes. Not Police Department**
 21 **letterhead, but Village of Ocean Beach**
 22 **letterhead?**
 23 A. I don't think so, no.
 24 **Q. You don't recall seeing letterhead**
 25 **that says Natalie Rogers, Mayor/Police**

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1 Cherry
 2 **Commissioner?**
 3 A. No.
 4 **Q. When did you first actually have**
 5 **your first tour as a police officer at the**
 6 **Village of Ocean Beach?**
 7 A. It had to be sometime in May of
 8 2004.
 9 **Q. Was there a departmental meeting**
 10 **leading into the season in 2004?**
 11 A. Yes, I believe there was.
 12 **Q. When did that take place?**
 13 A. I am not quite sure of the exact
 14 date.
 15 **Q. Do you recall what month it was**
 16 **held in?**
 17 A. It is usually in April. I am not
 18 sure if the 2004 was in April or what the date
 19 on that was, but I remember being in a
 20 meeting.
 21 **Q. What is the purpose of the**
 22 **departmental meeting?**
 23 A. I guess --
 24 MR. NOVIKOFF: Objection. You can
 25 answer.

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1 Cherry
 2 A. I wasn't sure the first year, but
 3 just the guys get together, check the
 4 equipment, anything new in the Village that is
 5 going on that we should know about.
 6 **Q. In '04 who ran the departmental**
 7 **meeting?**
 8 A. I believe it was Chief Paradiso.
 9 **Q. How about in '05 who ran the**
 10 **departmental meeting?**
 11 A. Again I believe it was Chief
 12 Paradiso. To the best of my recollection it
 13 was Chief Paradiso.
 14 **Q. You attended in '05 as well?**
 15 A. Yes.
 16 **Q. How about in '06?**
 17 A. I think that was George Hesse.
 18 **Q. You attended in '06?**
 19 A. Yes.
 20 **Q. How about in '07 who ran it?**
 21 A. George Hesse.
 22 **Q. Did you attend in '07?**
 23 A. Yes.
 24 **Q. How about in '08, who ran it?**
 25 A. Chief Hesse.

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1 Cherry
 2 **Q. And you attended as well in '08?**
 3 A. Yes.
 4 **Q. How did you learn that there was a**
 5 **departmental meeting in '04?**
 6 A. We were sent a letter.
 7 **Q. Were you sent a letter each year?**
 8 A. Yes.
 9 **Q. For the departmental meeting?**
 10 A. I am not sure about the first
 11 year, but every year after that we got a
 12 letter saying when the meeting was, usually a
 13 month or so in advance, particular day,
 14 usually a Sunday.
 15 **Q. What were your duties as a**
 16 **seasonal police officer in Ocean Beach?**
 17 A. Basically patrol. Issue summonses
 18 when necessary. Handle aided cases and
 19 medical emergencies. Crowd control. Normal
 20 patrol function. Enforce ordinances, New York
 21 State laws and Village ordinances.
 22 **Q. Did you issue any summonses when**
 23 **you were a seasonal police officer for Ocean**
 24 **Beach?**
 25 A. Yes.

1 Cherry
 2 **Q. You actually issued them or that**
 3 **was part of your job?**
 4 A. I actually issued them.
 5 **Q. Do you remember how many you**
 6 **issued in '04?**
 7 A. Two.
 8 **Q. How about '05?**
 9 A. I wasn't a police officer in '05,
 10 I was a dispatcher from season of 2005 to
 11 current season 2008.
 12 **Q. So you were a police officer for**
 13 **only one season?**
 14 A. That is correct.
 15 **Q. And you testified that you issued**
 16 **two summonses?**
 17 A. Yes. To the best of my
 18 recollection.
 19 **Q. Have you ever seen a job**
 20 **description of seasonal police officer prior**
 21 **to working there?**
 22 A. I don't believe so.
 23 **Q. While you were working there did**
 24 **you ever see a job description of a seasonal**
 25 **police officer?**

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1 Cherry
 2 A. I don't believe so.
 3 MR. GOODSTADT: Would you mark
 4 this document as Cherry Exhibit 4, Police
 5 Officer Part-Time/Seasonal.
 6 MR. NOVIKOFF: This doesn't have a
 7 Bates stamp number on.
 8 MR. GOODSTADT: I believe it was
 9 produced by the County without a Bates
 10 stamp on it, or it was referred to in one
 11 of their responses, a web-site.
 12 MR. NOVIKOFF: That is fine.
 13 MR. GOODSTADT: Either I pulled it
 14 off the web or they produced without a
 15 number.
 16 MR. NOVIKOFF: So this is Cherry
 17 Exhibit 4?
 18 MR. CONNOLLY: I believe at an
 19 earlier deposition you indicated that it
 20 was produced by the County without a
 21 Bates number.
 22 MR. NOVIKOFF: So it is Cherry
 23 Exhibit 4.
 24 (Cherry Exhibit 4, Police Officer
 25 Part-Time/Seasonal, marked for

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1 Cherry

2 identification, as of this date.)

3 **Q. I placed in front of Mr. Cherry**
 4 **what is now marked as Cherry Exhibit 4, a**
 5 **two-page Exhibit, not Bates stamped, but**
 6 **entitled Police Officer Part-Time/Seasonal.**
 7 **It has the number of 5001 at the top of both**
 8 **pages.**

9 **Have you ever seen the document**
 10 **that has been marked as Cherry Exhibit 4?**

11 MR. NOVIKOFF: If you need to read
 12 the document to answer that question, go
 13 ahead.

14 A. Let me --

15 **Q. Go ahead, take your time.**

16 A. Okay.

17 **Q. Have you ever seen the document**
 18 **marked as Cherry Exhibit 4?**

19 A. No.

20 **Q. I want to focus your attention on**
 21 **the necessary special requirements section?**

22 A. Yes.

23 **Q. Sir, is it your testimony that at**
 24 **the time that you were a police officer in the**
 25 **Village of Ocean Beach that you didn't know**

1 Cherry

2 **police officer in Ocean Beach?**

3 MR. NOVIKOFF: Objection.

4 A. It is difficult for me to answer.
 5 I don't know if this was in effect when I
 6 had -- in 2004. If it was not in effect and I
 7 didn't know if there was a requirement. I
 8 never saw this, I didn't know of any of these
 9 requirements.

10 **Q. My question is -- I just note for**
 11 **the record that it is dated April 5, 2004,**
 12 **although I don't know if that is a**
 13 **requirement --**

14 MR. NOVIKOFF: The document will
 15 speak no itself.

16 MR. GOODSTADT: It will.

17 **Q. My question was whether at any**
 18 **time that you were a police officer were you**
 19 **aware of a requirement as set forth in point,**
 20 **I think we are up to 5?**

21 MR. NOVIKOFF: Objection.

22 A. No.

23 **Q. Same question with point 6, any**
 24 **time that you were a police officer with the**
 25 **Village of Ocean Beach did you know of a**

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1 Cherry

2 **that number 4 listed under there was a**
 3 **requirement?**

4 MR. NOVIKOFF: Objection. Asked
 5 and answered. You can answer again.

6 A. Can I ask a question?

7 **Q. Sure.**

8 A. When did this take effect?

9 **Q. The question is not when it took**
 10 **effect or didn't, my question to you, at the**
 11 **time that you worked as an Ocean Beach police**
 12 **officer did you know of a requirement that is**
 13 **set forth in point 4?**

14 MR. NOVIKOFF: Objection. Asked
 15 and answered. You can answer.

16 A. Okay, could you repeat the
 17 question.

18 (Record read.)

19 A. Point 4, I didn't know that was a
 20 requirement when I took -- when I applied in
 21 2004.

22 **Q. How about point 5, did you know if**
 23 **that was a requirement at the time that you**
 24 **were a police officer; not at the time that**
 25 **you applied, but any time when you were a**

1 Cherry

2 **requirement set forth in point 6?**

3 MR. NOVIKOFF: Same objection.

4 A. No.

5 **Q. How about point 9, at any point**
 6 **when you were a police officer with the**
 7 **Village of Ocean Beach did you know of a**
 8 **requirement set forth in point 9 at the bottom**
 9 **of the first page?**

10 MR. NOVIKOFF: Objection.

11 A. No.

12 **Q. Sir, I believe you testified**
 13 **before that you knew that you couldn't just go**
 14 **from the Nassau County Police Department to**
 15 **the Suffolk County Police Department; correct?**

16 MR. NOVIKOFF: Objection. You can
 17 answer.

18 A. Correct.

19 **Q. Did you believe that you could**
 20 **just go from the Nassau County Police**
 21 **Department to a village police department in**
 22 **Suffolk County?**

23 MR. NOVIKOFF: Objection.

24 A. I didn't know. I was hired so I
 25 assumed that I was, similar to the State Park

1 Cherry
2 Police, because I went from Nassau to the
3 State Park Police, which covered Nassau and
4 Suffolk, and I was under the impression, you
5 know, the similar situation with Ocean Beach,
6 I thought they hired me based on my
7 qualifications as a police officer. I didn't
8 realize there was Suffolk County requirements
9 prior to that.

10 **Q. Did you know that the Village of**
11 **Ocean Beach Police Department fell under the**
12 **jurisdiction of the Suffolk County Civil**
13 **Service Department?**

14 MR. NOVIKOFF: Objection.

15 A. I didn't know at that time. I
16 mean I didn't know if they could hire on their
17 own.

18 **Q. How about when you were an**
19 **employee there, did you know that the Ocean**
20 **Beach Police Department fell under the**
21 **jurisdiction of the Suffolk County Civil**
22 **Service?**

23 MR. NOVIKOFF: Objection, you can
24 answer.

25 A. I found out later on when I was

1 Cherry
2 **you could go work for a village in Suffolk**
3 **County Police Department or in a village in**
4 **Suffolk County while you were at Nassau?**

5 MR. NOVIKOFF: Objection.

6 A. While I was at Nassau?

7 **Q. Yes?**

8 A. A Suffolk County village?

9 **Q. Yes.**

10 A. I didn't know.

11 MR. GOODSTADT: Would you mark as
12 Cherry Exhibit 5, copy of summons.

13 (Cherry Exhibit 5, three-page
14 exhibit, Bates stamp numbers 11690, 11754
15 and 11628, marked for identification, as
16 of this date.)

17 **Q. I placed in front of Mr. Cherry**
18 **what has been marked as Cherry Exhibit 5, a**
19 **three-page exhibit, Bates stamp numbers are**
20 **11690, 11754 and 11628.**

21 Mr. Cherry, I want you to focus on
22 the page that is Bates stamped 11690?

23 A. Yes.

24 **Q. Do you see that?**

25 A. Yes.

1 Cherry
2 employed that the civil service, when there
3 was some question about whether we were going
4 to get a waiver or not. I said a waiver for
5 what. He said to be a police officer.

6 **Q. When did that happen?**

7 A. That was sometime after I was
8 employed.

9 **Q. When?**

10 A. The exact date, sometime in 2004,
11 the end of 2004.

12 **Q. At the end of the season 2004 or**
13 **the end of the calendar year 2004?**

14 A. Towards the end of the season
15 2004.

16 **Q. But prior to the end of the season**
17 **2004 and in fact when you were still with**
18 **Nassau County you knew that you couldn't just**
19 **go work for Suffolk County; correct?**

20 MR. NOVIKOFF: Objection. You can
21 answer.

22 A. The Suffolk County Police, I knew
23 that, that is correct.

24 **Q. Just so I am clear for the record,**
25 **your testimony is that you didn't know whether**

1 Cherry
2 **Q. If you look at the, two separate**
3 **summonses here, do you see that?**

4 A. Yes much.

5 **Q. These are summonses?**

6 A. Yes.

7 **Q. The one on the list, if you look**
8 **on the bottom you see a signature there over**
9 **the word complainant?**

10 A. Yes.

11 **Q. Is that your signature?**

12 A. Yes.

13 **Q. And it is dated July 24, 2004?**

14 A. Yes.

15 **Q. Is this one of the summonses that**
16 **you testified to that you filled out?**

17 A. No, it is not one of the summonses
18 that I was talking about. This was a summons
19 that was issued to David Butcher on an
20 appearance on a charge of petit larceny.

21 **Q. I just want to correct the record,**
22 **the date of the actual summons is 7/18, the**
23 **appearance date is July 24th, I misstated that**
24 **for the record.**

25 A. Okay.

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1 Cherry
 2 **Q. This is a different summons than**
 3 **what you were testifying to before?**
 4 MR. NOVIKOFF: Objection. You can
 5 answer.
 6 A. Right. It is a summons, but I
 7 said two. One was for I think riding a bike,
 8 and the other one was for open alcohol. This
 9 one was for a petit larceny charge. So that
 10 would be additional summons that I wrote. But
 11 yes, I did write it.
 12 **Q. If you look down at the bottom**
 13 **next to your signature, it says PO/426?**
 14 A. Yes.
 15 **Q. What is that?**
 16 A. That is my rank and my shield
 17 number.
 18 **Q. If you look at the bottom line it**
 19 **says bail amount, a hundred. Bail receipt**
 20 **number 92890. Do you see that?**
 21 A. Yes.
 22 **Q. What is that?**
 23 A. That is a receipt issued when a
 24 person gives bail, you give him a receipt for
 25 the amount of money that he presented for

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1 Cherry
 2 A. At the front desk.
 3 **Q. At the Police Department?**
 4 A. Yes.
 5 **Q. Was that box locked?**
 6 A. Yes.
 7 **Q. Do you know who had the key?**
 8 A. I believe the chief had the key, I
 9 can't say for sure it was locked.
 10 **Q. So you don't know one way or the**
 11 **other if it was locked?**
 12 A. Yes. Not sure. I don't know for
 13 sure.
 14 **Q. Do you know whether there was a**
 15 **lock on the box?**
 16 A. There was a hasp on the box for a
 17 lock.
 18 **Q. Did you ever see the box locked?**
 19 A. I am not sure.
 20 **Q. Did you ever see the box unlocked?**
 21 A. Closed and unlocked, yes.
 22 **Q. Did you in fact place the hundred**
 23 **dollars cash into the box?**
 24 A. Yes.
 25 **Q. You didn't lock it?**

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1 Cherry
 2 bail.
 3 **Q. This person gave to you a hundred**
 4 **dollars bail?**
 5 A. Gave to the Police Department. It
 6 was attached to the summons and sent to court.
 7 **Q. Did this guy actually give you a**
 8 **hundred dollars?**
 9 A. Yes.
 10 **Q. He handed it to you?**
 11 A. Yes.
 12 **Q. Check or cash?**
 13 A. Cash.
 14 **Q. What did you do with that money?**
 15 A. That money was attached to the
 16 summons and forwarded to the court.
 17 **Q. What do you mean by attached,**
 18 **stapled or something like that?**
 19 A. Clipped.
 20 **Q. Paper clip?**
 21 A. Yes. Put in a secure box or a
 22 box.
 23 **Q. What secure box?**
 24 A. Summons box.
 25 **Q. Where was that summons box?**

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1 Cherry
 2 A. Yes.
 3 **Q. So it was unlocked when you did**
 4 **it?**
 5 A. I don't know if it was locked or
 6 not, I don't remember.
 7 **Q. Is there like a slot on the top**
 8 **where you put it in?**
 9 A. Yes.
 10 **Q. So you don't have to actually open**
 11 **the box to put it in?**
 12 A. Correct.
 13 **Q. Do you recall whether you opened**
 14 **it to put it in, or did you drop it in the**
 15 **slot.**
 16 A. I put it in the slot, but I don't
 17 recall specifically this summons, whether I --
 18 I usually put it right in the slot.
 19 **Q. When you say usually do it, how**
 20 **many times have you put money in the slot?**
 21 A. Summonses go in the slot, and if
 22 there is bail attached to the summons it goes
 23 with the summons.
 24 **Q. So at most it happened three times**
 25 **or I should say --**

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1 **Cherry**
 2 A. I didn't necessarily put them in
 3 the box. I didn't -- the person who issued
 4 the summons didn't actually put it in the
 5 desk. Usually a desk officer would certify
 6 the summons and put the summons in the box.
 7 **Q. Is that what happened with the**
 8 **summons on 11690?**
 9 A. I don't recall exactly what
 10 happened. But the bail was for the summons.
 11 **Q. If you turn to 11754?**
 12 A. Yes.
 13 **Q. The summons on the right?**
 14 A. Yes.
 15 **Q. Page 2 of the exhibit?**
 16 A. Okay.
 17 **Q. The summons on the right?**
 18 A. Yes.
 19 **Q. Is that one of the two summonses**
 20 **that you testified to before?**
 21 A. Yes.
 22 **Q. If you look at the bottom above**
 23 **the line that says complainant, is that your**
 24 **signature?**
 25 A. That is correct.

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Page 177

1 **Cherry**
 2 **Q. Did you ever generally sign your**
 3 **name PJ Cherry like it is on 11754, or Patrick**
 4 **J. Cherry like it is on 11690?**
 5 A. I signed both ways.
 6 **Q. What was the summons for?**
 7 A. The summons was for riding a bike
 8 during the restricted hours.
 9 **Q. Was there any bail money attached**
 10 **to this summons?**
 11 A. No.
 12 **Q. If you look at the third page of**
 13 **this exhibit which is Bates number 11628, and**
 14 **do you recognize this summons?**
 15 A. Yes.
 16 **Q. Is this the summons that you**
 17 **filled out?**
 18 A. Yes, it is.
 19 **Q. Is this the other summons that you**
 20 **testified to before?**
 21 A. Yes.
 22 **Q. If you look above the line that**
 23 **says complainant, do you see the signature?**
 24 A. Yes.
 25 **Q. P. Cherry?**

1 **Cherry**
 2 A. Yes.
 3 **Q. Is that another way that you sign**
 4 **your name?**
 5 A. Yes.
 6 **Q. Again it is PO/426?**
 7 A. Yes.
 8 **Q. That was your shield number?**
 9 A. Yes.
 10 **Q. Was there bail money attached to**
 11 **this summons?**
 12 A. No.
 13 **Q. What was this summons for?**
 14 A. Open alcohol.
 15 **Q. Other than for the three summonses**
 16 **that were marked as Cherry Exhibit 5, did you**
 17 **write any other summonses while you were**
 18 **employed by the Village of Ocean Beach?**
 19 MR. NOVIKOFF: Objection.
 20 A. These were the only two or three
 21 that I can recall.
 22 **Q. You issued them as a police**
 23 **officer?**
 24 A. Yes.
 25 **Q. Did you make any arrests while you**

1 **Cherry**
 2 **were employed by the Village of Ocean Beach?**
 3 A. Yes, I believe the first summons
 4 involved an arrest situation. He was arrested
 5 and issued a summons to appear in court.
 6 **Q. Did you make any other arrests**
 7 **while you were a police officer of the Village**
 8 **of Ocean Beach?**
 9 A. I don't believe so.
 10 **Q. I believe you said there came a**
 11 **time where you were no longer employed as a**
 12 **police officer; is that correct?**
 13 A. That is correct.
 14 **Q. When was that?**
 15 A. May 2005 to the present, to the
 16 end of 2008.
 17 MR. GOODSTADT: Would you mark
 18 this document as Cherry Exhibit 6,
 19 Incorporated Village of Ocean Beach list.
 20 (Cherry Exhibit 6, Incorporated
 21 Village of Ocean Beach list, marked for
 22 identification, as of this date.)
 23 **Q. I placed in front of Mr. Cherry**
 24 **what has now been marked Exhibit 6, one-page**
 25 **document that bears the Bates number 234.**

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Page 180

1 Cherry
 2 Mr. Cherry, have you ever seen the document
 3 that is Bates numbered 234?
 4 A. No.
 5 Q. Have you ever seen any document in
 6 this form?
 7 A. No.
 8 Q. Please look down next to your name
 9 on this list, you see where your name appears,
 10 Cherry, Patrick?
 11 A. Yes, I do.
 12 Q. Do you know what the RS stands
 13 for?
 14 A. No.
 15 Q. If you look across, that is a
 16 Social Security number; is that correct?
 17 A. Yes.
 18 Q. The title is police officer, do
 19 you see that?
 20 A. Yes.
 21 Q. Is that the wage that you were
 22 paid in '04?
 23 A. I believe so, yes.
 24 Q. And the date there is 9/28/04, do
 25 you see that?

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1 Cherry
 2 A. Yes.
 3 Q. That was during the period that
 4 you were a police officer in Ocean Beach?
 5 A. I may have ended -- it may have
 6 been after I left for that season, I am not
 7 sure exactly the date that I left in 2004 for
 8 the season. But I believe it is after the
 9 date that I left. I am not sure. I don't
 10 know what date was my last day.
 11 Q. So after the season ended did you
 12 still hold your shield?
 13 A. Yes.
 14 Q. Did you still maintain your
 15 weapon?
 16 A. Yes.
 17 Q. So were you still a police officer
 18 with Ocean Beach at the time?
 19 A. Yes.
 20 Q. So as of 9/28/04 you were still
 21 employed as a police officer?
 22 A. I was employed, but not working,
 23 yes, that is correct.
 24 Q. You see next to that there is a
 25 handwritten notation that says disapproved, do

1 Cherry
 2 you see that?
 3 A. Yes.
 4 Q. Do you know what that stands for?
 5 A. No, I don't.
 6 Q. Has anyone ever told you that you
 7 were disapproved for something at Ocean Beach?
 8 A. No.
 9 Q. You testified that there was a
 10 point in time in 2005 that I believe you said
 11 it was May, that you no longer were employed
 12 as a police officer at Ocean Beach; is that
 13 correct?
 14 MR. NOVIKOFF: Objection.
 15 A. Yes, I believe May 1st I resigned
 16 as a police officer.
 17 Q. Why did you resign as a police
 18 officer?
 19 A. I was advised I have to go through
 20 the Suffolk County test, you know, the
 21 physical agility and so on and so forth. I
 22 had a health issue in December of that year
 23 and I decided not to stay on as a police
 24 officer.
 25 Q. Who advised you that you have to

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1 Cherry
 2 go through the Suffolk County tests?
 3 A. I believe Chief Hesse did and I
 4 got letters for scheduling appointments to
 5 take the various tests. And I decided I
 6 wasn't going to go back as a police officer.
 7 Q. When was the first time that you
 8 were advised that you needed to go through the
 9 Suffolk County test?
 10 MR. NOVIKOFF: Objection. Asked
 11 and answered. You can answer.
 12 A. I don't recall.
 13 Q. Do you recall what month it was?
 14 A. No.
 15 Q. Do you recall --
 16 A. Sometime after the season was over
 17 he told me I have to.
 18 Q. At some point between the end of
 19 the season '04 and May 1, '05?
 20 A. Yes.
 21 Q. Do you recall which calendar year
 22 it was in; was it in '04 or '05?
 23 A. I believe the end of '04, the end
 24 of the season.
 25 Q. So some point between September of

1 **Cherry**
 2 **'04 and December of '04 is when?**
 3 A. I believe so. To the best of my
 4 recollection.
 5 **Q. Did you first learn of it through**
 6 **Chief Hesse or Deputy Chief Hesse or Sergeant**
 7 **Hesse, or did you first learn of it through**
 8 **those letters that you got?**
 9 A. I got some letters -- I am not
 10 sure. George may have told me first and then
 11 I got the letters, or the letters may have
 12 spurred a phone call, what is the story, what
 13 is going on. But there came a point where I
 14 decided not to go back.
 15 **Q. What tests are you referring to?**
 16 A. The physical agility, that was the
 17 first time I think I got the letter. I don't
 18 recall, there may have been a letter for a --
 19 just physical agility. I rescheduled and I
 20 decided I was not going to do it and I let
 21 civil service know.
 22 **Q. Did George Hesse inform you when**
 23 **you first learned from him by phone or in**
 24 **person?**
 25 A. Probably by phone, I am not sure

1 **Cherry**
 2 **you?**
 3 A. Not in the conversation -- not
 4 during the conversation that we had, he didn't
 5 give me any indication of that.
 6 MR. GOODSTADT: Let's take a
 7 break.
 8 THE VIDEOGRAPHER: The time is
 9 12:50. Off the record.
 10 (Lunch recess taken.)
 11 (Time noted: 12:50 p.m.)
 12
 13
 14
 15
 16
 17
 18
 19
 20
 21
 22
 23
 24
 25

1 **Cherry**
 2 exactly how. I may have called him to find
 3 out what is going on, because he is over on
 4 Ocean Beach, it is not easy to go over there,
 5 so it is usually a phone conversation.
 6 **Q. Do you recall what he said during**
 7 **the phone conversation?**
 8 A. I believe he said that civil
 9 service is going to require that the police
 10 officers who are working there, who were not
 11 former -- who were former police officers have
 12 to go through a whole Suffolk County Civil
 13 Service process.
 14 **Q. Did he tell you this was a new**
 15 **requirement?**
 16 MR. NOVIKOFF: Objection.
 17 **Q. From Suffolk County?**
 18 A. He didn't say it was a new
 19 requirement, he just informed us that we have
 20 to go through the civil service process, he
 21 didn't say anything about it being a new or
 22 not new.
 23 **Q. Did he indicate one way or the**
 24 **other whether he knew about those requirements**
 25 **prior to the time that he disclosed them to**

1 **Cherry**
 2 **AFTERNOON SESSION**
 3 (Time noted: 1:38 p.m.)
 4 **PATRICK JOHN CHERRY,**
 5 resumed and testified as follows:
 6 **EXAMINATION BY (Cont'd.)**
 7 **MR. GOODSTADT:**
 8 **THE VIDEOGRAPHER:** The time is
 9 1:38, we are back on the record.
 10 **Q. Before we broke for lunch**
 11 **Mr. Cherry I believe that we were discussing**
 12 **when you learned about the requirements for**
 13 **Suffolk County Civil Service, do you recall**
 14 **that?**
 15 A. Yes.
 16 **Q. I believe you testified before**
 17 **about somebody asking whether you were going**
 18 **to get a waiver; is that correct?**
 19 MR. NOVIKOFF: Objection. Like I
 20 said you can answer everything unless I
 21 tell you not to.
 22 A. Okay. Yes.
 23 **Q. What were you referring to when**
 24 **you said that?**
 25 A. A waiver for us to work as police

1 Cherry

2 officers.

3 **Q. Who was inquiring whether you were**
4 **going to get a waiver?**

5 A. Somebody mentioned it to me that
6 they were going to try to get a waiver.

7 **Q. Do you remember who that was?**

8 A. I believe it was Chief Hesse.

9 **Q. Do you know when he asked you**
10 **about that?**

11 A. No. He didn't ask me, he sort of
12 mentioned that he was trying to get a waiver.

13 **Q. He mentioned that he was trying to**
14 **get a waiver for you?**

15 A. Yes.

16 **Q. Do you know what efforts he took**
17 **to get that waiver?**

18 A. No.

19 **Q. Do you know when he was taking**
20 **those efforts to try to get a waiver?**

21 A. No.

22 **Q. Do you know whether there is such**
23 **a thing as a waiver?**

24 A. I don't know.

25 **Q. Did there come a point in time**

1 Cherry

2 **or the attempts of George Hesse getting you a**
3 **waiver?**

4 MR. NOVIKOFF: Objection.

5 A. I never heard anything about it.

6 **Q. Did you ever follow up with him?**

7 A. No.

8 **Q. Did anyone ever tell you that you**
9 **could no longer work as a police officer**
10 **unless you got these tests or certifications**
11 **from Suffolk County Civil Service?**

12 A. Yes. I think when he said we had
13 to pass all the tests to stay on the job.

14 **Q. When did you learn that, you had**
15 **to pass a test to stay on the job?**

16 A. When did I hear that; when I got
17 the letters from civil service I inquired and
18 they -- I wanted to cancel a physical, an
19 agility tests. I said, I asked them, I said
20 what are the requirements. He said you have
21 to pass every phase of the examinations.

22 **Q. How many letters did you get from**
23 **civil service?**

24 A. I think I got two or three about
25 civil service requirements, taking the exams,

1 Cherry

2 where -- strike that.

3 **Do you know who Officer Dyer,**
4 **D-Y-E-R?**

5 A. Yes.

6 **Q. Who is Officer Dyer?**

7 A. John was an officer who came on, I
8 believe it was the same year that I did in
9 2004.

10 **Q. Did Officer Dyer, did he have the**
11 **same issues with respect to the certifications**
12 **and tests?**

13 A. I believe so.

14 MR. NOVIKOFF: Objection.

15 **Q. Did you ever discuss the issue**
16 **with him?**

17 A. I don't believe so.

18 **Q. Did you ever hear him mention the**
19 **issue?**

20 A. No.

21 **Q. You never heard him talking about**
22 **it in the police station?**

23 MR. NOVIKOFF: Objection.

24 A. I don't recall, no.

25 **Q. Whatever happened with the waiver**

1 Cherry

2 scheduling of exams.

3 **Q. You don't recall when the first**
4 **one came?**

5 A. No, it was sometime the end of
6 the -- after the -- the end of the 2004
7 season.

8 **Q. So it was sometime between the end**
9 **of the season and the end of the calendar year**
10 **2004?**

11 A. Yes.

12 **Q. Did you keep copies of those**
13 **letters?**

14 A. No.

15 **Q. What did you do with them?**

16 A. I eventually threw them away.

17 **Q. Did you ever speak to anyone at**
18 **civil service about the letters or the**
19 **requirements?**

20 A. I called there to let them know I
21 wasn't going to make an exam. Other than that
22 I didn't speak to anybody specifically about
23 the -- what you had to do.

24 **Q. So your exams were actually**
25 **schedule?**

<p style="text-align: right;">Page 190</p> <p>1 Cherry</p> <p>2 MR. NOVIKOFF: Objection.</p> <p>3 A. Scheduled, yes.</p> <p>4 Q. Which exam was scheduled?</p> <p>5 A. The physical agility.</p> <p>6 Q. The other exam was scheduled?</p> <p>7 A. No, I think -- well, no.</p> <p>8 Q. Did you try to schedule any other</p> <p>9 exams?</p> <p>10 A. No.</p> <p>11 Q. Did they try to schedule them with</p> <p>12 you?</p> <p>13 A. No.</p> <p>14 Q. And did you call them to schedule</p> <p>15 the physical agility or did they send you the</p> <p>16 days?</p> <p>17 A. They sent me a date and they asked</p> <p>18 if I wasn't going to take it, to give them</p> <p>19 notice, which I did.</p> <p>20 Q. Why did you decide not to take it?</p> <p>21 MR. NOVIKOFF: Objection.</p> <p>22 A. I decided I was not going to</p> <p>23 pursue it any more, I was going to resign.</p> <p>24 Q. Why?</p> <p>25 MR. NOVIKOFF: Objection.</p>	<p style="text-align: right;">Page 192</p> <p>1 Cherry</p> <p>2 a one-page document bearing Bates stamp 4113.</p> <p>3 Mr. Cherry, do you recognize the</p> <p>4 document that has been marked as Cherry</p> <p>5 Exhibit 7?</p> <p>6 A. Yes, sir.</p> <p>7 Q. What is this document?</p> <p>8 A. It is my resignation letter to</p> <p>9 Chief Paradiso.</p> <p>10 Q. Do you recall writing this letter?</p> <p>11 A. Yes, I do.</p> <p>12 Q. Did you actually type it?</p> <p>13 A. Yes.</p> <p>14 Q. Is that your signature on the</p> <p>15 bottom of the letter?</p> <p>16 A. Yes.</p> <p>17 Q. You want to look down it says: To</p> <p>18 Chief Edward Paradiso. Do you see that?</p> <p>19 A. Yes.</p> <p>20 Q. Why were you submitting it to</p> <p>21 Chief Edward Paradiso?</p> <p>22 A. Because he was the chief of the</p> <p>23 department.</p> <p>24 Q. Did you give a copy of this letter</p> <p>25 to anyone else other than Chief Paradiso?</p>
<p style="text-align: right;">Page 191</p> <p>1 Cherry</p> <p>2 A. Well, I decided to resign. I</p> <p>3 didn't want to go through the process and like</p> <p>4 I said before I had some health issues, I</p> <p>5 didn't want to go further to be a police</p> <p>6 officer in the Village.</p> <p>7 Q. If you were not required to take a</p> <p>8 test would you have stayed on as a police</p> <p>9 officer in the Village?</p> <p>10 MR. NOVIKOFF: Objection.</p> <p>11 A. Probably not.</p> <p>12 Q. So you were going to resign</p> <p>13 regardless of whether the civil service issue</p> <p>14 came up?</p> <p>15 A. Yes.</p> <p>16 Q. Had you told anyone that?</p> <p>17 A. No.</p> <p>18 MR. GOODSTADT: Would you mark</p> <p>19 this document as Cherry Exhibit 7, memo</p> <p>20 dated May 1, 2005.</p> <p>21 (Cherry Exhibit 7, memo dated May</p> <p>22 1, 2005, marked for identification, as of</p> <p>23 this date.)</p> <p>24 Q. I place in front of Mr. Cherry</p> <p>25 what has now been marked as Cherry Exhibit 7,</p>	<p style="text-align: right;">Page 193</p> <p>1 Cherry</p> <p>2 A. No.</p> <p>3 Q. Had you spoken to anyone in the</p> <p>4 department that you were going to resign prior</p> <p>5 to submitting this?</p> <p>6 MR. NOVIKOFF: Objection.</p> <p>7 A. Yes, I believe I advised Sergeant</p> <p>8 Hesse that I was not going to stay on as a</p> <p>9 police officer, I was going to resign.</p> <p>10 Q. When did you advise him of that?</p> <p>11 A. Sometime prior to May 1st when I</p> <p>12 submitted the letter.</p> <p>13 Q. How far prior to May 1st?</p> <p>14 A. I don't know the exact date.</p> <p>15 Q. Was it days, weeks, months?</p> <p>16 A. Probably a month or two prior.</p> <p>17 Q. So you think it was some point in</p> <p>18 the first quarter of 2005 that you told him</p> <p>19 that?</p> <p>20 A. Yes, that sounds reasonable.</p> <p>21 Q. You say on the top sentence:</p> <p>22 Effective immediately I am reluctantly</p> <p>23 tendering my resignation. Do you see that?</p> <p>24 A. Yes.</p> <p>25 Q. Why were you reluctant to tender</p>

1 **Cherry**
 2 **your resignation?**
 3 MR. NOVIKOFF: Objection.
 4 A. I would rather stay as a police
 5 officer, but due to my health concerns and not
 6 wanting to go through the process again I
 7 decided not to.
 8 **Q. Just so I understand, did you**
 9 **tender your resignation because of the health**
 10 **concerns, or did you tender your resignation**
 11 **because you didn't want to go through the**
 12 **process?**
 13 MR. NOVIKOFF: Objection.
 14 A. Both.
 15 **Q. Then the first sentence of the**
 16 **second paragraph it says: It has been a**
 17 **pleasure to have worked for and with you,**
 18 **Sergeant Hesse, and the other members of the**
 19 **department. Do you see that?**
 20 A. Yes.
 21 **Q. At the time George Hesse's title**
 22 **was sergeant?**
 23 A. Yes.
 24 MR. NOVIKOFF: Objection.
 25 **Q. The last sentence of your letter**

1 **Cherry**
 2 **required to -- for you to pass to get the job**
 3 **of seasonal dispatcher?**
 4 MR. NOVIKOFF: Objection.
 5 A. I don't think there are any test
 6 requirements.
 7 **Q. What were your duties as a**
 8 **dispatcher?**
 9 A. Answer the telephone. Take
 10 complaints. Dispatch the officers to answer
 11 the complaints. Make entries in the blotter.
 12 Make entries in the computer log provided by
 13 the officers on their field reports, put them
 14 into the computer.
 15 When summonses come in record them
 16 in the blotter and file them to be forwarded
 17 to court. Information, you know, I get
 18 information sent in. Anything that comes
 19 through the main desk.
 20 **Q. Do you carry a weapon?**
 21 A. No.
 22 **Q. Do you have a shield as a**
 23 **dispatcher?**
 24 A. Yes.
 25 **Q. Do you have a police uniform?**

1 **Cherry**
 2 **it says: If I can assist the department in**
 3 **another capacity on a part-time basis, please**
 4 **let me know. Do you see that?**
 5 A. Yes.
 6 **Q. Did they take you up on that**
 7 **offer?**
 8 A. Yes.
 9 **Q. What job did they offer you?**
 10 A. They asked me if I would stay on
 11 as a dispatcher.
 12 **Q. On a part-time basis?**
 13 A. Yes. Seasonal dispatcher.
 14 **Q. Seasonal or part-time?**
 15 MR. NOVIKOFF: Objection.
 16 A. Seasonal.
 17 **Q. Just so I am clear, dispatcher was**
 18 **the civil service title?**
 19 MR. NOVIKOFF: Objection.
 20 A. Yes.
 21 **Q. Was it just seasonal dispatcher or**
 22 **emergency services dispatcher?**
 23 MR. NOVIKOFF: Objection.
 24 A. Seasonal dispatcher.
 25 **Q. Do you know what tests if any are**

1 **Cherry**
 2 A. You wear a uniform, it is
 3 different from the police uniform. Black
 4 shirt and khaki pants.
 5 **Q. Same shield?**
 6 A. Similar shield, it says dispatcher
 7 on it.
 8 **Q. What is your shield number?**
 9 A. 552.
 10 **Q. As dispatcher do you have the**
 11 **authority to make arrests?**
 12 A. No.
 13 **Q. Do you have authority to issue**
 14 **summonses?**
 15 MR. NOVIKOFF: Objection.
 16 A. No.
 17 **Q. At the time that you were a police**
 18 **officer in Ocean Beach who was your**
 19 **supervisor?**
 20 MR. NOVIKOFF: Objection.
 21 A. Whoever was the senior officer
 22 working, either Chief Paradiso or Sergeant
 23 Hesse.
 24 **Q. What tours did you work?**
 25 A. The first year I worked primarily

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1 Cherry
 2 nights, 4 to 12, that extended to 4 to 1 a.m.
 3 on Saturdays.
 4 **Q. When you say at first, you are**
 5 **talking about 2004?**
 6 A. That is correct.
 7 **Q. Did you ever work any other tours**
 8 **other than 4 to 12 and 4 to 1 while you were a**
 9 **police officer in Ocean Beach?**
 10 A. I may have worked a day tour now
 11 and then, but primarily 4 to 12's.
 12 **Q. Who was the senior officer or**
 13 **superior officer on duty during that shift,**
 14 **the 4 to 12 shift?**
 15 A. Who did I work for?
 16 **Q. Yes.**
 17 A. Whoever happened to be the
 18 superior officer that night. Either Chief
 19 Hesse or -- Chief Paradiso or Sergeant Hesse.
 20 **Q. Who was the superior officer**
 21 **generally on that tour, 4 to 12?**
 22 A. Sergeant Hesse.
 23 **Q. For the entire tour?**
 24 A. Yes.
 25 **Q. Was there any point that Chief**

1 **Cherry**
 2 **MR. NOVIKOFF: Objection.**
 3 A. If there was an issue during the
 4 tour?
 5 **Q. Yes.**
 6 A. Yes, you would go to the officer
 7 who was in charge if you had to seek advice
 8 from a superior.
 9 **Q. That is a chain of command, you go**
 10 **to the superior officer who is on duty?**
 11 **MR. NOVIKOFF: Objection.**
 12 A. Yes.
 13 **Q. That is what was told to you?**
 14 **MR. NOVIKOFF: Objection.**
 15 A. Yes. That is what normal
 16 procedure would be.
 17 **Q. Was it told to you that that was**
 18 **the procedure there as well?**
 19 A. Yes.
 20 **Q. Who told you that?**
 21 A. I don't think anybody -- well, you
 22 went to the -- if you had a problem I had to
 23 go to a superior, you went to the superior
 24 officer that is working.
 25 **MR. NOVIKOFF: Listen to the**

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1 **Cherry**
 2 **Paradiso was the superior officer on the 4 to**
 3 **12 tour when you worked?**
 4 **MR. NOVIKOFF: Objection.**
 5 A. Occasionally. If the chief wasn't
 6 available or on vacation the chief may stay
 7 and work later than that, but he was primarily
 8 the daytime supervisor.
 9 **Q. While you were employed as a**
 10 **police officer at Ocean Beach did Chief**
 11 **Paradiso work the 4 to 12 shift other than to**
 12 **go in when Hesse was on vacation?**
 13 A. Not normally, no.
 14 **Q. How about at all?**
 15 A. I would say occasionally he would
 16 depending on if the supervisor was needed that
 17 night or he stayed late. He was the chief, he
 18 could do whatever he wanted to do.
 19 **Q. So if there was an issue that you**
 20 **wanted to raise with your superior officer**
 21 **or -- strike that.**
 22 **If there was an issue that you**
 23 **wanted to raise with the department would you**
 24 **raise it to your superior officer who was on**
 25 **duty at that time?**

1 **Cherry**
 2 question. He is asking specific
 3 questions.
 4 **Q. You believe that was well known**
 5 **throughout the department that that was the**
 6 **process?**
 7 **MR. NOVIKOFF: Objection.**
 8 A. Yes.
 9 **Q. I believe you testified that**
 10 **Officer John Dyer was hired as a police**
 11 **officer the same year that you were; is that**
 12 **correct?**
 13 **MR. NOVIKOFF: Objection.**
 14 A. I believe so, yes.
 15 **Q. Were there any other police**
 16 **officers who were hired for the first season,**
 17 **for the 2004 season other than for you and**
 18 **Mr. Dyer?**
 19 **MR. NOVIKOFF: Objection. To the**
 20 **extent that he knows you can answer.**
 21 A. I don't know.
 22 **Q. How many police officers were**
 23 **employed by the Village of Ocean Beach in the**
 24 **'04 season?**
 25 A. I don't know the exact number.

Cherry

Q. Approximately?

MR. NOVIKOFF: Objection.

A. I would say approximately 30.

Q. How many of those police officers generally worked the 4 to 12 tour?

MR. NOVIKOFF: Objection.

A. It would depend on the night.

Q. Was there a certain group of officers that generally worked the same shift as you?

MR. NOVIKOFF: Objection.

A. I worked three days, primarily three days a week the first year I believe, and depending on what days you worked it would be different officers every night. It may be the same officer, but some of the same officers may have worked, whoever was available to work in a particular night would be working. It was not the same person -- it was not the same crew every night.

Q. Did you generally work the same days each week?

A. Yes.

Q. What days were those?

Cherry

Q. Generally George Hesse was the superior officer on duty?

A. I would say --

MR. NOVIKOFF: Objection. Wait until the question is over.

A. I would say generally George Hesse was the sergeant assigned.

Q. Did the Bossetti's work the Friday 4 to 12 frequently with you?

MR. NOVIKOFF: Objection.

A. I remember them working occasionally with me, yes.

Q. How about Officer Moeller?

MR. NOVIKOFF: Objection.

A. I worked with -- anybody you named I worked with, but I can't say exactly what days they worked without having the schedule in front of me.

Q. So there was no regular crew that worked either the Friday, Saturday or Sunday tour, 4 to 12, is that your testimony?

MR. NOVIKOFF: Objection.

A. Not that I can recall, no.

Q. The only regular that was on duty

Cherry

A. If I recall I worked Friday, Saturday and Sunday to the best of my recollection for the 2004 season.

Q. I want to go back, you said a couple of times now during the first season, you are referring to the 2004 season?

A. Yes.

Q. Were there any other seasons that you worked as a police officer for Ocean Beach?

A. No, but you are talking about scheduling.

Q. I just wanted to be clear?

A. Yes, right.

Q. Of the Friday -- on the Friday tour, the 4 to 12 tour that I am talking about, who generally were the officers that you worked with on that tour?

A. I couldn't say specifically because it was different every night. It was depending on who was available to work, and depending on what the person's schedule was, it would be different people every night. I couldn't say any given date who was working.

Cherry

Q. during those tours for you that you can recall is George Hesse?

MR. NOVIKOFF: Objection.

A. Yes.

Q. Did you ever socialize with any officers outside of work during that 2004 season?

A. No.

Q. How about did you ever socialize with any officers -- strike that.

Did you ever eat meals with those officers during your tour, any officers during your tour?

A. Yes.

Q. Did you ever go to the Bocce Beach on Sunday night for dinner?

A. Yes.

Q. How often would you do that?

A. Just about every Sunday if we were not -- if it was not busy, usually every Sunday.

MR. NOVIKOFF: Are you done with your answer?

THE WITNESS: Yes.

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1 Cherry

2 **Q. Who did you generally go with on**
3 **Sundays to the Bocce Beach for dinner?**4 A. It was myself, George Hesse,
5 depending on who was working. Sometimes the
6 Bossetti's, sometimes Officer Moeller. That
7 is all I recall. It was different people,
8 whoever happened to be working, who wanted to
9 join, go over there, they would go with us.10 **Q. And did you eat dinner during your**
11 **tour?**

12 A. Yes.

13 **Q. Were you paid for the time that**
14 **you were eating dinner?**15 A. I believe we had a half hour meal
16 period and yes, sometimes it went over a half
17 hour and we would bring the radio with us, but
18 it was during the tour, yes.19 **Q. Who paid for those dinners?**

20 A. We did.

21 **Q. Individually?**22 A. Yes, we got the bill and we gave
23 in our share.24 **Q. Did you ever drink any alcohol**
25 **during those dinners?**

1 Cherry

2 **Q. How did you learn the radio codes**
3 **for Suffolk County when you were working in**
4 **the Village of Ocean Beach as a police**
5 **officer?**

6 MR. NOVIKOFF: Objection.

7 A. There was a card that listed all
8 the radio numbers that was at the front desk
9 or I had a copy of it, and I looked at it. If
10 you had to use a code that you didn't know,
11 you would look at the code and see what code
12 it was.13 **Q. What if you were outside of the**
14 **station?**

15 A. I had one in my summons book also.

16 **Q. You carried a copy of the card**
17 **code?**

18 A. Yes.

19 **Q. Do you know who alerted civil**
20 **service to the fact that there were**
21 **uncertified officers working in Ocean Beach?**

22 MR. NOVIKOFF: Objection.

23 A. No.

24 **Q. Did you ever hear anybody accuse**
25 **Tom Snyder of alerting civil service to the**

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1 Cherry

2 A. No.

3 **Q. Do you know if any other officers**
4 **ever drank any alcohol during those dinners?**

5 A. No.

6 **Q. You don't know or they didn't**
7 **drink?**8 MR. NOVIKOFF: Objection. You can
9 answer.

10 A. No, we didn't drink alcohol.

11 **Q. I am not asking whether you did, I**
12 **am asking whether any other officers drank**
13 **alcohol?**

14 MR. NOVIKOFF: Objection.

15 A. I didn't see anybody drink any
16 alcoholic beverages.17 **Q. Sir, are the radio, the police**
18 **radio codes different in Suffolk County than**
19 **they are in Nassau County -- strike that.**

20 MR. NOVIKOFF: Objection.

21 **Q. Back in 2004 were the radio codes**
22 **in the Police Department in Suffolk County**
23 **different than they were for Nassau County?**

24 MR. NOVIKOFF: Objection.

25 A. Yes.

1 Cherry

2 **fact that there were uncertified officers**
3 **working in Ocean Beach?**

4 MR. NOVIKOFF: Objection.

5 A. No.

6 **Q. Did you ever hear anybody call Tom**
7 **Snyder a rat?**

8 A. No.

9 MR. NOVIKOFF: Objection.

10 **Q. Did you ever hear anyone accuse**
11 **Frank Fiorillo of notifying civil service to**
12 **the issue that there were uncertified workers**
13 **in Ocean Beach?**

14 MR. NOVIKOFF: Objection.

15 A. No.

16 **Q. Did you ever hear anyone call**
17 **Frank Fiorillo a rat?**

18 MR. NOVIKOFF: Objection.

19 A. No.

20 MR. GOODSTADT: What is the basis?
21 MR. NOVIKOFF: I think it is form.
22 MR. GOODSTADT: What is wrong with
23 the form?

24 MR. NOVIKOFF: I think the form --

25 MR. GOODSTADT: What about it?

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1 Cherry
 2 MR. NOVIKOFF: I believe you are
 3 calling for hearsay. I am preserving my
 4 objection, I am not speaking, Andrew.
 5 **Q. Did you ever hear anyone accuse Ed**
 6 **Carter of alerting civil service to the issue**
 7 **that there were uncertified police officers**
 8 **working in Ocean Beach?**
 9 MR. NOVIKOFF: Objection.
 10 A. No.
 11 **Q. Did you hear anyone call Ed Carter**
 12 **a rat?**
 13 A. No.
 14 **Q. Did you ever hear anyone accuse**
 15 **Kevin Lamm of notifying civil service that**
 16 **there were uncertified workers working as**
 17 **police officers at Ocean Beach?**
 18 A. No.
 19 MR. NOVIKOFF: Objection.
 20 **Q. Did you ever hear anyone call**
 21 **Kevin Lamm a rat?**
 22 MR. NOVIKOFF: Objection.
 23 A. No.
 24 **Q. Did you ever hear anyone accuse**
 25 **Joe Nofi of alerting civil service to the fact**

1 Cherry
 2 **Q. Were you aware of any other**
 3 **officers who worked as police officers at**
 4 **Ocean Beach who had the same issues about**
 5 **being uncertified?**
 6 A. I believe the Bossetti's, Richard
 7 and Gary. I don't think there was anybody
 8 else. Dyer, myself. I can't think of anybody
 9 else right now that came over as a police
 10 officer that was uncertified.
 11 **Q. How did you know that John Dyer**
 12 **had the same problem?**
 13 A. Because he told me he had to take
 14 the civil service required tests.
 15 **Q. Do you know what Dyer did before**
 16 **working at Ocean Beach?**
 17 A. I believe he was a New York City
 18 Police Officer.
 19 **Q. Do you know whether he knew Hesse**
 20 **prior to coming over to work at Ocean Beach?**
 21 A. I don't know.
 22 **Q. How did you learn that the**
 23 **Bossetti's had the same problem about being**
 24 **uncertified as you did?**
 25 A. Because they had to take the

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1 Cherry
 2 **that there were uncertified police officers**
 3 **working at Ocean Beach?**
 4 MR. NOVIKOFF: Objection.
 5 A. No.
 6 **Q. Did you ever hear anyone call Joe**
 7 **Nofi a rat?**
 8 MR. NOVIKOFF: Objection.
 9 A. No.
 10 **Q. Do you know what the term rat**
 11 **means in the terms of a police officer?**
 12 MR. NOVIKOFF: Objection.
 13 A. Yes.
 14 **Q. What does it mean?**
 15 A. A guy who accuses another officer
 16 of doing something that is against the
 17 department.
 18 **Q. Have you ever called anyone a rat?**
 19 A. No.
 20 **Q. I believe you testified that**
 21 **Officer Dyer had the same issues that you did**
 22 **about being uncertified; is that correct?**
 23 MR. NOVIKOFF: Objection.
 24 A. Yes, I believe he did have the
 25 same issues.

1 Cherry
 2 required civil service test also.
 3 **Q. I understand they had to take it,**
 4 **I want to know how you learned that they had**
 5 **to take it?**
 6 MR. NOVIKOFF: Objection.
 7 A. They probably told me they had to
 8 take it.
 9 **Q. Do you recall them telling you?**
 10 A. Yes. They were scheduled to take
 11 one.
 12 **Q. When did you learn that Gary**
 13 **Bossetti was uncertified and had to take those**
 14 **tests?**
 15 A. Sometime after the 2004 season I
 16 think everybody had to take the test, you
 17 know, formal police officers who were working
 18 there that didn't -- had to take the test.
 19 **Q. How far after the end of the '04**
 20 **season did you learn that?**
 21 A. The same time that I found
 22 basically, the end of the season, after the
 23 end of the season before the 2005 season
 24 started.
 25 **Q. So did Gary Bossetti tell you that**

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1 Cherry

2 he had to take the test?

3 A. I believe it was mentioned that he
4 had to take the test. I don't know if he told
5 me directly that he had to take the test.6 Q. It was on the phone or in person
7 that he mentioned this to you?8 A. As I said I don't know if he
9 personally told me or I just heard that he had
10 to take the test, or somebody mentioned it, I
11 don't recall.12 Q. Did you speak to Gary Bossetti in
13 between the end of the '04 season and the '05
14 season?

15 A. About the tests?

16 Q. At all.

17 A. I probably spoke to him at a
18 Christmas party or something like that. I
19 mean just to say hello.20 Q. Was there a Christmas party in
21 '04?

22 A. I am not sure.

23 Q. Were there Christmas parties
24 generally at Ocean Beach?

25 A. Yes. We usually got together

1 Cherry

2 Q. Who paid for the Christmas parties
3 that you attended?

4 A. I am not sure.

5 Q. Did you have to pay for any of
6 them?7 A. Last year I think we chipped in 20
8 bucks a man, something like that, but I am not
9 sure of the prior years.10 Q. You don't recall chipping in the
11 prior years?

12 MR. NOVIKOFF: Objection.

13 A. No, I don't.

14 Q. Did you ever hear that the Ocean
15 Beach PBA paid for those parties?

16 A. I believe that they possibly did.

17 MR. NOVIKOFF: Let's take a break.
18 One second. I don't have to go off the
19 record.20 THE VIDEOGRAPHER: The time is
21 2:08. We are off the record.

22 (Recess taken.)

23 THE VIDEOGRAPHER: The time is
24 2:09. We are back on the record.

25 Q. Sir, I think you just testified

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1 Cherry

2 around Christmastime. I can't say it was
3 every year. We did do it last year, but I
4 can't say it was every year and I didn't
5 attend every party.6 Q. Is this a party that is different
7 than the one that you testified to before that
8 happened at Hesse's house and Paradiso's
9 house?

10 A. Yes.

11 Q. Where would the Christmas parties
12 be held?13 A. They were a restaurant in, that I
14 can recall, a restaurant in Sayville.

15 Q. Was it called the Portly Villager?

16 A. Yes.

17 Q. Do you know who owned that
18 restaurant?

19 A. Mrs. Keglén (phonetic).

20 Q. Is her husband an employee as a
21 police officer in Ocean Beach?

22 A. He was.

23 Q. What years was he employed as a --

24 A. He was only there -- to the best
25 of my recollection I think it was 2006, 2007.

1 Cherry

2 that you believe that the Ocean Beach PBA may
3 have paid for the Christmas parties, but
4 before you testified that you never heard of
5 an Ocean Beach PBA?6 MR. NOVIKOFF: Objection. You can
7 answer.

8 A. Yes.

9 Q. How do you reconcile that?

10 A. I was wrong. I am -- as far as I
11 knew we didn't have a PBA. I wasn't a member
12 of the Ocean Beach PBA. I don't know what
13 fund paid for it, but it was -- somebody paid
14 for it. I am not sure who.15 Q. Why do you think it is possible
16 that the Ocean Beach PBA?

17 MR. NOVIKOFF: Objection.

18 A. As I said I don't know if there
19 was a PBA fund. As far as I know we didn't
20 have a PBA. I wasn't a member of any Ocean
21 Beach PBA. I was not a contributing member.
22 I didn't contribute to it. I didn't pay any
23 dues to a PBA. So I don't know if there is a
24 PBA.

25 Q. Do you know whether Sergeant

<p style="text-align: right;">Page 218</p> <p>1 Cherry</p> <p>2 and/or Chief Hesse ever solicited donations</p> <p>3 for the PBA?</p> <p>4 MR. NOVIKOFF: Objection.</p> <p>5 MR. CONNOLLY: Objection.</p> <p>6 A. I have no personal knowledge of</p> <p>7 that.</p> <p>8 Q. To your knowledge who at Ocean</p> <p>9 Beach was in charge of insuring compliance</p> <p>10 with the civil service laws with respect to</p> <p>11 police officers?</p> <p>12 MR. NOVIKOFF: Objection.</p> <p>13 A. I don't know.</p> <p>14 Q. While you were a police officer at</p> <p>15 Ocean Beach did you ever receive a handbook,</p> <p>16 an employee handbook?</p> <p>17 A. I don't believe so, no.</p> <p>18 Q. Did you ever receive any</p> <p>19 performance evaluations?</p> <p>20 MR. NOVIKOFF: Objection.</p> <p>21 A. I don't believe so.</p> <p>22 Q. Did you ever discuss or have any</p> <p>23 correspondence other than for Cherry 7 with</p> <p>24 Chief Paradiso about the civil service</p> <p>25 requirements?</p>	<p style="text-align: right;">Page 220</p> <p>1 Cherry</p> <p>2 worked as a dispatcher at Ocean Beach?</p> <p>3 A. 2005.</p> <p>4 Q. So there was no break in service</p> <p>5 in terms of seasons that you were employed at</p> <p>6 Ocean Beach, was there?</p> <p>7 A. No.</p> <p>8 Q. Was there any -- strike that.</p> <p>9 How did you go about applying for</p> <p>10 the position as dispatcher?</p> <p>11 A. I think I -- I don't remember.</p> <p>12 Q. Did you fill out an application?</p> <p>13 A. I am not sure if I did or not for</p> <p>14 the dispatcher position.</p> <p>15 Q. Do you know who made the decision</p> <p>16 to hire you as a dispatcher?</p> <p>17 A. In 2005, no, I am not sure.</p> <p>18 Q. Did you interview for the</p> <p>19 position?</p> <p>20 A. No.</p> <p>21 Q. Did you resubmit a resume?</p> <p>22 A. No.</p> <p>23 Q. Did you submit any paperwork in</p> <p>24 connection with your application for the</p> <p>25 position as a dispatcher?</p>
<p style="text-align: right;">Page 219</p> <p>1 Cherry</p> <p>2 MR. NOVIKOFF: Objection.</p> <p>3 A. No.</p> <p>4 Q. Did you ever tell Chief Paradiso</p> <p>5 why you were resigning as a police officer in</p> <p>6 Ocean Beach?</p> <p>7 MR. NOVIKOFF: Other than Cherry</p> <p>8 ??</p> <p>9 MR. GOODSTADT: Well, Cherry 7</p> <p>10 says reluctantly.</p> <p>11 MR. NOVIKOFF: Your question was</p> <p>12 pretty broad. I just wanted to clarify.</p> <p>13 A. Did I tell Chief Paradiso?</p> <p>14 Q. Why you were resigning?</p> <p>15 A. I never had a direct conversation</p> <p>16 with him, no.</p> <p>17 Q. Did you ever any kind of indirect</p> <p>18 conversation or communication with him?</p> <p>19 A. No.</p> <p>20 Q. I believe that you testified that</p> <p>21 you worked as a dispatcher after that; is that</p> <p>22 correct?</p> <p>23 MR. NOVIKOFF: Objection.</p> <p>24 A. Yes.</p> <p>25 Q. What was the first season that you</p>	<p style="text-align: right;">Page 221</p> <p>1 Cherry</p> <p>2 A. I don't recall doing any</p> <p>3 additional paperwork.</p> <p>4 Q. Did you collect unemployment</p> <p>5 during the period between the end of the '04</p> <p>6 season and the start of the '05 season?</p> <p>7 A. No.</p> <p>8 Q. How come?</p> <p>9 A. I didn't qualify for it.</p> <p>10 Q. Did you apply for it?</p> <p>11 A. Yes.</p> <p>12 Q. Why do you think you didn't</p> <p>13 qualify for it?</p> <p>14 A. There is a certain criteria that</p> <p>15 the unemployment, based on how many months you</p> <p>16 work and how much you make, and I didn't fit</p> <p>17 the criteria, that criteria to receive -- I</p> <p>18 applied for it and then they sent me a letter</p> <p>19 saying that I was not eligible that season. I</p> <p>20 was not eligible at this point.</p> <p>21 Q. Was it because you didn't work</p> <p>22 enough hours?</p> <p>23 A. Yes. A combination of hours and</p> <p>24 salary.</p> <p>25 Q. When you moved from the position</p>

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1 Cherry
2 of police officer to dispatcher was there a
3 change in salary?
4 A. Yes.
5 Q. Did it go up or down?
6 A. Down.
7 Q. Would you mark as Cherry Exhibit
8 8, Confidential Wage/Salary History. March
9 23, 2004.
10 (Cherry Exhibit 8, Confidential
11 Wage/Salary History. March 23, 2004,
12 marked for identification, as of this
13 date.)
14 Q. I place in front of Mr. Cherry
15 what has now been marked as Cherry Exhibit 8,
16 it is a one-page exhibit bearing Bates stamp
17 5424.
18 Mr. Cherry, do you recognize this
19 document that is marked as Exhibit 8?
20 A. This is first time I have seen it.
21 Q. I just want you to look down, I
22 represent to you this is a document that was
23 produced to us by the Village of Ocean Beach.
24 If you look from the dates from 3/23/04 to
25 5/31/04, do you see that?

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1 Cherry
2 A. Yes.
3 Q. Does that refresh your
4 recollection as to when you first started
5 working as a police officer?
6 MR. NOVIKOFF: Objection.
7 A. That was probably -- 03/23 was
8 probably the day that I was sworn in.
9 MR. NOVIKOFF: The question is
10 does reviewing this document now
11 independent from this document refresh
12 your recollection as to when you first
13 started working as a police officer; not
14 reading this, do you have now a
15 recollection as to when you first started
16 working as a police officer.
17 A. Well, I didn't start working as a
18 police officer until the May of -- so working,
19 working as a police officer, until May of
20 2004.
21 Q. So during the period from March
22 23, '04 through May 31, '04 were you working
23 as a police officer during that period?
24 A. Probably the last two weeks in
25 May. That is when I started working

1 Cherry
2 physically as a police officer at the beach.
3 Q. Is that your hourly rate of pay,
4 the \$18.63 an hour?
5 A. Yes. To the best of my
6 recollection that is correct.
7 Q. Then as of June 1, '04 through May
8 31, '05, was that your hourly rate of pay,
9 \$19.28?
10 A. Yes, I believe we got a raise.
11 Q. I thought that Cherry 7 indicated
12 that effective immediately, meaning May 1, '05
13 you resigned as a police officer; is that
14 correct?
15 MR. NOVIKOFF: Objection.
16 A. Yes.
17 Q. Did they accept that resignation
18 as of May 1, '04?
19 A. As far as I know.
20 Q. Do you know whether you were paid
21 at the rate of a police officer during the
22 month of May 2004?
23 A. I don't believe so, no.
24 Q. So it is your belief that this is
25 incorrect?

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1 Cherry
2 MR. NOVIKOFF: Objection.
3 Q. Cherry 8?
4 MR. NOVIKOFF: Objection.
5 A. I don't believe -- I was not
6 working as a police officer on the 31st, so I
7 don't believe that date is correct.
8 Q. If you look at 6/1/05 to 5/31/06,
9 do you see that?
10 A. Yes.
11 Q. It says dispatcher?
12 A. Yes.
13 Q. \$17.74, was that your rate of pay
14 during that year?
15 A. I believe so.
16 Q. The same thing for the '06, 6/1/06
17 to 5/31/07 you were a dispatcher?
18 A. Yes, I was.
19 Q. And was that your rate of pay,
20 \$18.36 an hour?
21 A. Yes.
22 Q. Do you know what your rate of pay
23 was for the '07 season?
24 A. I think it was \$19 for the '07
25 season.

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1 Cherry
 2 **Q. Were you ever paid overtime?**
 3 A. No.
 4 **Q. How about when you were a police**
 5 **officer, were you ever paid overtime?**
 6 A. I don't think I ever worked enough
 7 hours to get paid overtime in a given pay
 8 period.
 9 **Q. During the period after the '05**
 10 **season to the start of the '06 season did you**
 11 **collect unemployment insurance?**
 12 A. I believe so. I would have to
 13 check. I would have to check with my records
 14 to be sure, but I believe I did.
 15 **Q. And in between seasons -- strike**
 16 **that.**
 17 **Prior to coming back to work in**
 18 **the '05 season did you have to submit any**
 19 **paperwork to apply for the position?**
 20 MR. NOVIKOFF: Objection.
 21 A. Of dispatcher?
 22 **Q. Well, did you start the '05 season**
 23 **as dispatcher?**
 24 A. Yes.
 25 **Q. So did you have to submit any**

1 Cherry
 2 **Q. I just want to know what your**
 3 **understanding is?**
 4 A. Yes.
 5 **Q. So it is your understanding there**
 6 **was no process to actually be rehired for the**
 7 **next season?**
 8 A. Not to my knowledge.
 9 **Q. I want to focus on the point when**
 10 **you were employed as a police officer in Ocean**
 11 **Beach. Did you ever have any alcoholic**
 12 **beverages while you were on duty?**
 13 A. No.
 14 **Q. Did you ever have an alcoholic**
 15 **beverage while you were in uniform?**
 16 A. No.
 17 **Q. Have you ever seen any police**
 18 **officer working for Ocean Beach drinking while**
 19 **on duty?**
 20 A. I never saw anybody, no.
 21 **Q. Did you ever see an Ocean Beach**
 22 **police officer drinking in uniform?**
 23 A. No, sir.
 24 **Q. Did you ever see an Ocean Beach**
 25 **police officer in a bar in uniform?**

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1 Cherry
 2 **application for the dispatcher position?**
 3 MR. NOVIKOFF: Objection, asked
 4 and answered.
 5 A. I don't believe so.
 6 **Q. After the '05 season ended prior**
 7 **to the '06 season did you have to reapply for**
 8 **the position of dispatcher?**
 9 A. No.
 10 **Q. Did you have to go through any**
 11 **process to be rehired as a dispatcher?**
 12 A. No.
 13 **Q. Did you stay as a dispatcher**
 14 **throughout the year for Ocean Beach?**
 15 A. '06?
 16 **Q. Yes.**
 17 A. Yes.
 18 **Q. So on the off season you were**
 19 **still employed as a dispatcher for Ocean**
 20 **Beach?**
 21 A. I was employed, but I didn't work
 22 during the off season.
 23 **Q. So you were employed but didn't**
 24 **work?**
 25 A. As far as I know.

1 Cherry
 2 A. While working?
 3 **Q. Yes.**
 4 A. Yes.
 5 **Q. Was it business related?**
 6 A. The ones I saw yes, they were
 7 business related.
 8 **Q. How many times did you see**
 9 **officers in bars?**
 10 A. When we got a call to a
 11 disturbance in a bar and the officers went
 12 inside. So whenever we had a call for a
 13 disturbance the officers responded and
 14 necessitated going into the bar, they would go
 15 into the bar.
 16 **Q. Did you ever have any alcoholic**
 17 **beverages in Ocean Beach while off duty?**
 18 A. Yes.
 19 **Q. How many times?**
 20 A. I stayed after work probably two
 21 or three times. In a particular season you
 22 are referring to or --
 23 **Q. When you were employed as a police**
 24 **officer?**
 25 A. Probably about two or three times

1 Cherry
 2 I stayed after work and had a few drinks.
 3 **Q. Do you know whether there is any**
 4 **policy with the Ocean Beach Police Department**
 5 **with respect to off duty police officers**
 6 **drinking in bars in Ocean Beach?**
 7 MR. NOVIKOFF: When; now or when
 8 he was a police officer?
 9 **Q. When you were a police officer.**
 10 A. I didn't know of any policy that
 11 said that.
 12 **Q. How about now?**
 13 A. I still don't know of any policy
 14 that says that.
 15 **Q. Did you ever ask anyone whether**
 16 **there was a policy with respect for that?**
 17 MR. NOVIKOFF: Objection.
 18 A. No.
 19 **Q. Did you ever have any alcoholic**
 20 **beverages inside the station, whether on or**
 21 **off duty?**
 22 A. No.
 23 **Q. Did you ever see any officers**
 24 **drinking any alcoholic beverages inside the**
 25 **station?**

1 Cherry
 2 A. No.
 3 **Q. Whether they were on or off duty?**
 4 A. No.
 5 **Q. Did you ever see any bartenders**
 6 **deliver any alcoholic beverages to the police**
 7 **station?**
 8 A. No.
 9 **Q. Do you know what Rocket Fuel is?**
 10 A. Yes.
 11 **Q. What is Rocket Fuel?**
 12 A. It is a -- like a Pina Colada
 13 drink, like a super Pina Colada type drink.
 14 **Q. Is it your testimony, sir, that**
 15 **you never saw anybody deliver Rocket Fuels to**
 16 **the police station?**
 17 MR. NOVIKOFF: Objection.
 18 A. Yes.
 19 MR. NOVIKOFF: Yes, that is your
 20 testimony?
 21 THE WITNESS: Yes.
 22 **Q. Did you ever see any police**
 23 **officers drinking while they were driving to**
 24 **the check point in the police vehicle?**
 25 A. No.

1 Cherry
 2 MR. NOVIKOFF: Drinking alcohol?
 3 **Q. Drinking alcohol?**
 4 A. No.
 5 **Q. Did you ever see any alcoholic**
 6 **containers, whether it be a beer can or beer**
 7 **bottle, in the police vehicles?**
 8 A. In the police vehicles, no.
 9 **Q. I trust you were never required to**
 10 **clean up any alcoholic containers in the**
 11 **police vehicle?**
 12 A. No.
 13 **Q. Were you ever required to clean**
 14 **any alcoholic beverage containers at the**
 15 **station?**
 16 A. No.
 17 **Q. Did you ever hear that any of the**
 18 **plaintiffs in this case complained about**
 19 **officers drinking while on duty?**
 20 A. Did I ever hear of any complaint?
 21 **Q. Yes.**
 22 A. I heard there were complaints
 23 about it, yes.
 24 **Q. When did you hear that?**
 25 A. When you are working you hear

1 Cherry
 2 things, and I couldn't recall who said what or
 3 when.
 4 **Q. But you recall hearing complaints**
 5 **by the plaintiffs that officers were drinking?**
 6 A. From the plaintiffs -- from the
 7 complainants, I never heard them complain
 8 directly or indirectly to me or anybody else.
 9 **Q. So what were you referring to when**
 10 **you said that you heard that there were**
 11 **complaints?**
 12 MR. NOVIKOFF: Objection.
 13 A. I just heard that there were
 14 complaints about drinking.
 15 **Q. Who did you hear that from?**
 16 A. I don't recall.
 17 **Q. What did you hear about it?**
 18 A. That there was somebody drinking,
 19 they were drinking on duty.
 20 **Q. Do you know who was alleged to**
 21 **have been drinking on duty?**
 22 A. No. I didn't -- I minded my own
 23 business, I didn't get involved in any of that
 24 stuff.
 25 **Q. How many times did you hear that**

1 Cherry
2 there were complaints about officers drinking
3 on duty?
4 A. I can't say.
5 Q. Approximately how many times?
6 MR. NOVIKOFF: Objection.
7 A. Once or twice.
8 Q. Who did you hear discussing it?
9 A. I don't recall.
10 Q. Did you ever discuss it with
11 anyone?
12 A. No.
13 Q. How did you get from the Village
14 after your tour to the checkpoint?
15 A. We drove out in the police car.
16 Q. When you say we, who are referring
17 to?
18 A. The people either coming on duty
19 or going off duty.
20 Q. Did all the officers leave
21 together that were getting off duty?
22 A. If they were leaving they were
23 going in the same truck.
24 Q. What do you mean if they were
25 leaving?

1 Cherry
2 A. Some officers didn't leave, some
3 stayed. If you were going to leave the truck
4 left and you went out with the truck.
5 Q. What do you mean by they stayed?
6 A. If you didn't want to go out with
7 the truck, the end of tour, you stayed -- you
8 didn't go in the truck. Those who were going
9 off duty and wanted to go out to their cars to
10 leave went by truck.
11 Q. Do you recall whether Gary
12 Bossetti used to go out in the bars at Ocean
13 Beach after getting off duty?
14 A. Did Gary?
15 Q. Yes.
16 A. I believe he did.
17 Q. Frequently?
18 MR. NOVIKOFF: Objection.
19 A. I don't know. I know he went
20 occasionally, but I don't know the frequency
21 of it.
22 Q. How many times to your knowledge?
23 A. I have no idea.
24 Q. Did Richard Bossetti ever go out
25 to the bars in Ocean Beach after getting off

1 Cherry
2 duty?
3 MR. NOVIKOFF: Objection.
4 A. Yes.
5 Q. How frequently?
6 A. I couldn't say how frequently.
7 Q. Did Arnold Harmon go out to the
8 bars in Ocean Beach after getting off duty?
9 MR. NOVIKOFF: Objection.
10 A. I don't recall him going out much
11 after work.
12 Q. Did you work with Arnold Harmon on
13 a lot of tours?
14 MR. NOVIKOFF: Objection.
15 A. Occasionally.
16 Q. Do you know whether he was one of
17 the officers who had the same certification
18 problem that you did?
19 MR. NOVIKOFF: Objection.
20 A. I believe he was.
21 Q. How about Tyree Bacon, do you know
22 who that is?
23 A. Yes.
24 Q. Did Mr. Bacon go out to bars after
25 getting off tours?

1 Cherry
2 MR. NOVIKOFF: Objection.
3 A. Not to my knowledge.
4 Q. Do you know whether Mr. Bacon had
5 a certification problem like you?
6 A. I don't believe so.
7 Q. I believe you testified that there
8 were two to three times that you went out to
9 the bars after getting off duty?
10 MR. NOVIKOFF: Objection.
11 A. Yes.
12 Q. On those two or three occasions
13 how did you get to the checkpoint?
14 A. We drove out.
15 Q. You drove out yourself?
16 A. No. Usually somebody -- when I
17 stayed, sometimes the truck wouldn't leave
18 right away, so I -- usually we got together
19 and say anybody going out, anybody wants to go
20 out, we are going to go out, the truck is
21 going to leave at let's say 2 o'clock. So the
22 guys go out until 2 o'clock, have a drink, 2
23 o'clock they get in the truck and they drive
24 out with whoever is going out.
25 Q. And who would drive the truck out

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1 Cherry
2 at 2 o'clock?
3 MR. NOVIKOFF: Objection.
4 A. One of the officers.
5 Q. One of the officers that was on
6 duty or one of the officers that you were out
7 with?
8 A. It would depend on whether the
9 truck was going to come back in or not. If
10 the guys were going off duty and were going to
11 leave the truck at the checkpoint by the
12 lighthouse in Fire Island, on the 4 to 8 tour,
13 the guys who were off duty would take the
14 truck out. If the truck was going to come
15 back into the Village, then somebody who was
16 working would take the truck out.
17 Q. Was it part of the officers who
18 were on duty's responsibility to drive the
19 officers who had been off duty and out
20 drinking to the checkpoint?
21 MR. NOVIKOFF: Objection.
22 A. It would be if the truck wasn't --
23 if the truck was supposed to come back into
24 the Village for it to take the people off for
25 a later tour, like a 5 o'clock tour, end of

1 Cherry
2 Q. How long did it take to get from
3 the Village to the lighthouse?
4 A. I would say fifteen minutes.
5 Q. So a round trip is about a half
6 hour?
7 A. Roughly.
8 Q. Did you ever hear -- strike that.
9 Did any of the plaintiffs in this
10 case ever drive you to the checkpoint on a
11 night where you stayed after your tour to
12 drink in the bars?
13 A. I don't recall.
14 Q. Did you ever hear that the
15 plaintiffs complained about having to drive
16 officers to the checkpoint after they had
17 gotten off their tour and had been drinking in
18 the bars?
19 MR. NOVIKOFF: Objection.
20 A. I never heard any complaints to
21 that effect.
22 Q. Prior to working in Ocean Beach
23 did you know any of the plaintiffs in this
24 case?
25 A. No.

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1 Cherry
2 the 5 o'clock tour.
3 Q. What was the tour after your 4 to
4 12 tour?
5 A. It was 4 to 12 on the Saturdays,
6 you had like a split tours. You had 4 to 12,
7 some people stayed until 1. Then you had the
8 like 9 at night to 5 in the morning tour. So
9 there would be people -- there could be people
10 going out at 12 after the 1 o'clock or 1:30 or
11 so -- after the 1 o'clock, the end of the 1
12 o'clock tour you go out around 1:30. Then
13 there was another tour, 9 to 5 tour go out at
14 5 o'clock.
15 Q. How many officers were on the 9 to
16 5 tour?
17 A. It would vary, I couldn't say for
18 sure.
19 Q. What would it vary between, what
20 was the lowest number?
21 MR. NOVIKOFF: Objection.
22 A. I would say two would be the
23 lowest.
24 Q. What was the highest number?
25 A. Maybe four or five.

1 Cherry
2 Q. Did you work while you were
3 employed as a police officer in Ocean Beach,
4 did you work with the plaintiffs in this case?
5 A. Yes.
6 Q. All five of them?
7 A. Yes. At one time or another
8 during that course of the season I worked with
9 all five.
10 Q. Did any of the plaintiffs in this
11 case work that 4 to 12 tour with you, or is it
12 just part of that split tour that you
13 testified to?
14 A. It would be any of the tours. I
15 worked 4 to 12, so I am sure that I worked
16 nights when they were working, you know, each
17 of the officers were working.
18 Q. Were you ever partnered with any
19 of the plaintiffs in this case?
20 A. I was partnered I think with Kevin
21 Lamm one night. I don't know if Frank or
22 Tommy ever worked -- if we ever worked
23 together as partners. Mostly worked alone
24 unless it was a Saturday night, and they team
25 up on Saturday night.

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Cherry

Q. Did you have a specific officer who you would partner with more frequently than others?

MR. NOVIKOFF: Objection.

A. No.

Q. Do you believe that the plaintiffs in this case were good police officers?

MR. NOVIKOFF: Objection.

A. It was not my duty -- I wouldn't evaluate them as a fellow police officer to say yes or no.

Q. Well sitting here today how do you evaluate their performance?

MR. NOVIKOFF: Objection.

A. As I said I wouldn't evaluate them. As a police officer we did our jobs. I did mine, they did their's. I wouldn't be a person who would rate them whether good, bad or indifferent.

Q. After 31 years as a Nassau County Police Officer and one year as a police officer in the Village of Ocean Beach you couldn't rate their performance; is that your testimony?

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Cherry

Village of Ocean Beach as a police officer whether you believe -- we can go individually.

Frank Fiorillo, was he a good police officer?

MR. NOVIKOFF: Objection. Asked and answered. Foundation. To the extent that you can answer, answer.

A. Was he a good police officer; in what respect, I don't understand what respect you are asking.

Q. Performing the duties of a police officer, you testified before to what they were. So in performing those duties do you believe that Frank Fiorillo was a good officer?

MR. NOVIKOFF: Objection. Asked and answered. Foundation. Go ahead, sir.

A. Frank answered -- from what I can see -- you are talking when I was a police officer or in general or over the course of the years that I worked there?

Q. Sitting here today what you have seen of Frank Fiorillo as a police officer,

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Cherry

MR. NOVIKOFF: Objection. You can answer.

A. I just don't do that. I wouldn't rate them on their job performance. Not my responsibility and I wouldn't rate them.

Q. I am asking you, I know you wouldn't rate them, but I am asking you today as you sit here to rate them, do you believe that they were good police officers?

MR. NOVIKOFF: Objection. Asked and answered. Foundation. Go ahead, I am not telling you not to answer.

A. I don't know how to answer that question.

Q. Is there something that could help you answer that question, should I rephrase it. I am not sure what you can't answer about it?

A. You are asking for my opinion, personal opinion?

Q. I am asking for your opinion as someone who has 31 years of experience as a decorated Nassau County Police Officer and Detective, and someone who is employed in the

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Cherry

whether it was while you were a police officer, while you were a dispatcher, you were up in the police station as a dispatcher; correct?

A. Yes, that is correct.

Q. So based on that experience do you think that Frank Fiorillo was a good police officer?

MR. NOVIKOFF: Just so I am clear on the question, you are asking based on his witnessing of Mr. Fiorillo's conduct as a police officer, does he have an opinion as to whether he is good or not?

Q. Based on your witnessing it, based on anything that you heard, based on your opinion sitting here today.

MR. NOVIKOFF: The way that question is structured I object. You can answer.

A. Frank answered his calls, he did his job as far as responding to assignments. His demeanor with the public was a little rough I would say. That's about it.

Q. Other than from his demeanor with

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1 Cherry
2 the public being rough, was there anything
3 else that you believed that was not good about
4 Mr. Fiorilli's performance as a police
5 officer?

6 MR. NOVIKOFF: Objection.

7 A. I would say no.

8 Q. What did you mean by the demeanor
9 with the public was rough?

10 A. He seems to be a little abrasive
11 with the public from what I can see. He comes
12 on strong.

13 Q. Are you aware of any complaints
14 made about Mr. Fiorilli by any member of the
15 public?

16 A. Am I personally aware of any?

17 Q. Whether personally or not
18 personally, I am not sure -- I am not asking
19 whether someone actually complained to you, I
20 am asking whether you are aware of any
21 complaints about Mr. Fiorilli when he was a
22 police officer at Ocean Beach?

23 MR. NOVIKOFF: Objection. To the
24 extent that you have knowledge you can
25 answer.

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1 Cherry
2 A. I am just not quite sure how to
3 answer that. I think there were some
4 complaints that he was abrasive in the way he
5 came on to people when they were being stopped
6 by him for violations, Village ordinances,
7 like riding bikes and things like that.

8 Q. Do you know of any specific
9 complaints that were raised about him?

10 A. Not personally, no.

11 Q. Do you know anybody who raised a
12 complaint about Mr. Fiorilli?

13 A. No, not anybody by name who raised
14 a complaint.

15 Q. When were these complaints raised?

16 A. You know, I don't know specific
17 complaints that were made, just the feel I got
18 for Frank was that he was -- you asked me my
19 opinion, I gave you my opinion. He was
20 somewhat abrasive or rough the way he handled
21 some of the people that he dealt with.

22 Q. You heard that -- you testified
23 that there were some complaints?

24 A. I heard there were complaints,
25 just what I said. But I can't be specific on

1 Cherry
2 who made the complaints or when or why.

3 Q. How did you learn that there were
4 complaints that were made?

5 A. You hear things, you see things
6 the way they happened.

7 Q. Who did you hear it from?

8 A. I don't recall.

9 Q. Where did you see it?

10 MR. NOVIKOFF: Objection.

11 MR. CONNOLLY: Can we take a break
12 right now?

13 MR. GOODSTADT: Let me ask the
14 question.

15 MR. NOVIKOFF: Note my objection,
16 you can answer.

17 A. What was the question?

18 Q. Who did you see it from; let me
19 rephrase it. What did you see?

20 A. Sometimes when he confronted
21 people he would do it a lot more forcibly than
22 I would. Just going by, you asked me for my
23 opinion and I am giving it to you.

24 MR. GOODSTADT: Let's take a
25 break.

1 Cherry
2 THE VIDEOGRAPHER: The time is
3 2:30. We are going off the record.

4 (Recess taken.)

5 THE VIDEOGRAPHER: The time is
6 2:48. We are back on the record.

7 Q. Before we broke Mr. Cherry you
8 testified that Mr. Fiorilli had done things
9 with a little more force than you would; is
10 that correct?

11 MR. NOVIKOFF: Objection.

12 A. As far as coming on, being more
13 forceful with his demeanor with civilians
14 sometimes.

15 Q. Were there any other officers in
16 Ocean Beach that had the same viewpoint about?

17 A. I think Kevin Lamm would be the
18 same.

19 Q. Anyone else?

20 A. I can't think of anybody else.

21 Q. Did you believe that George Hesse
22 came on more forcibly than you would to any
23 member of the public?

24 MR. NOVIKOFF: Objection.

25 Q. In any dealings with the public?

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1 Cherry
 2 A. No.
 3 Q. Do you believe that Ed Carter was
 4 a good police officer at Ocean Beach?
 5 MR. NOVIKOFF: Objection.
 6 A. I didn't work with Ed Carter very
 7 much. He usually worked midnights. I really
 8 can't form an opinion on Ed.
 9 Q. How many tours did you work with
 10 Ed?
 11 A. I have no idea, it was not a lot
 12 though.
 13 Q. You believe that -- strike that.
 14 Do you have any -- do you know of
 15 anything that would lead you to believe that
 16 Ed Carter was not a good police officer?
 17 MR. NOVIKOFF: Objection.
 18 A. I have no direct knowledge on
 19 that.
 20 Q. Did you ever hear anything from
 21 anyone else that would lead you to believe
 22 that Ed Carter was not a good police officer?
 23 MR. NOVIKOFF: Objection.
 24 A. No.
 25 Q. Do you believe that Kevin Lamm was

1 Cherry
 2 real -- if he had a problem in the street he
 3 could have called for assistance to handle the
 4 situation in the street, rather than putting a
 5 person in handcuffs and bringing them to the
 6 station for an alcohol violation for instance.
 7 Q. Is that separate and apart from
 8 him coming on --
 9 A. Yes.
 10 Q. Anything else other than for those
 11 two things that would lead you to believe that
 12 Kevin Lamm was not a good police officer?
 13 A. No.
 14 Q. So to your understanding
 15 everything else that Kevin Lamm did as a
 16 police officer were good?
 17 MR. NOVIKOFF: Objection.
 18 A. What do you mean by good?
 19 Q. I mean was there anything that you
 20 would in your experience as a police officer
 21 with 31 years in Nassau County and at least
 22 one season in the Village of Ocean Beach as a
 23 police officer, and then working with police
 24 officers as a dispatcher for the three seasons
 25 after that or four seasons after that, is

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1 Cherry
 2 a good police officer?
 3 MR. NOVIKOFF: What was the
 4 question?
 5 Q. Do you believe that Kevin Lamm was
 6 a good police officer?
 7 MR. NOVIKOFF: Objection.
 8 Foundation. You can answer.
 9 A. As I think I mentioned just a
 10 moment ago that Kevin Lamm did sometimes come
 11 on more forcefully than a normal type of
 12 individual -- you know, dealing with the
 13 public.
 14 Q. Other than for coming on more
 15 forcefully in his dealing with the public --
 16 A. I mean verbally more forcefully,
 17 not physically forcefully.
 18 Q. Other than for coming on verbally
 19 more forcefully with the public was there
 20 anything else that would lead you to believe
 21 that Kevin Lamm was not a good police officer?
 22 MR. NOVIKOFF: Objection.
 23 A. It seems that Kevin would bring
 24 people into the station handcuffed for a minor
 25 summons or violation, and when there was no

1 Cherry
 2 there anything that you are aware of other
 3 than from what you testified to in which you
 4 believe that Kevin Lamm did not perform his
 5 duties as a police officer in a -- other than
 6 for a good manner?
 7 MR. NOVIKOFF: Objection.
 8 A. No, I don't think so.
 9 Q. Do you believe that Thomas Snyder
 10 was a good police officer?
 11 MR. NOVIKOFF: Objection.
 12 Foundation. You can answer.
 13 A. Basically the same with Tom, I
 14 didn't work many tours with Tom. I couldn't
 15 express an opinion about whether Tom was a
 16 good police officer or not. I didn't work
 17 with him enough to form an opinion.
 18 Q. Are you aware of anything or any
 19 incident that would lead you to believe that
 20 Thomas Snyder was not a good police officer?
 21 A. No.
 22 MR. NOVIKOFF: Objection.
 23 Q. Do you believe that Joe Nofi was a
 24 good police officer?
 25 MR. NOVIKOFF: Objection.

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1 Cherry
2 Foundation.
3 A. In my opinion Joe needed some
4 guidance when he was working. As a matter of
5 fact we used to -- he used to be assigned to
6 work with Frank to not help him out, but sort
7 of -- you know, partner up with him so if he
8 had any problem Frank could help him out with
9 it.

10 **Q. So did you understand that Frank**
11 **was assigned to help mentor Joe?**

12 A. To be with him, to assist Joe if
13 he had any problems.

14 **Q. What leads to believe that Joe**
15 **Nofi needed guidance?**

16 A. Just the way he performed his
17 duties, writing summonses and some of the
18 ways -- you know I saw as a dispatcher I get
19 all the summons and they were not written very
20 clearly. You know, what happened. Frank
21 would assist Joe with those.

22 **Q. Anything else other than the way**
23 **he wrote summonses that led you to believe**
24 **that he needed guidance?**

25 A. No. I didn't work very many tours

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1 Cherry
2 with Joe, but enough to see that he needed
3 some guidance.

4 **Q. Did you ever tell Joe that his**
5 **summonses were not clear?**

6 MR. NOVIKOFF: Objection.

7 A. Occasionally I couldn't read them.
8 I said Joe, I can't read this. I would have
9 to put the contents of the summons into the
10 computer and I couldn't read them, or they
11 were broken sentences, what exactly do you
12 mean by this.

13 **Q. So it was not his penmanship you**
14 **are talking about, it was the actual words**
15 **that you didn't understand?**

16 A. Yes. Both, it was both.

17 **Q. How many times did you tell him**
18 **that his summonses were not clear?**

19 A. A couple of times.

20 **Q. Were there any other officers at**
21 **Ocean Beach whose summonses were not clear?**

22 A. None that I can think of.

23 **Q. Other than for the fact that his**
24 **summonses at times were not clear was there**
25 **anything else that you are aware of that would**

1 Cherry
2 **lead you to believe that Mr. Nofi was not a**
3 **good police officer?**

4 MR. NOVIKOFF: Objection.

5 A. No.

6 **Q. I want to focus now on the**
7 **Halloween incident.**

8 A. Okay.

9 **Q. That you had testified to before.**

10 **That was the, just so we are clear, same page,**
11 **that was the alleged assault at Houser's Bar**
12 **on Halloween night of 2004?**

13 A. Okay.

14 **Q. Again just so we are clear, I**
15 **believe, correct me if I am wrong so we are**
16 **working on the same page, that it was the**
17 **night of October 30th into the morning of**
18 **October 31st; is that right?**

19 A. Yes.

20 **Q. How did you first learn that there**
21 **was an incident in Houser's?**

22 A. Sergeant Hesse called me at home
23 to tell me that Gary Bossetti had been fired
24 as a result of an incident that occurred at
25 Houser's Bar.

1 Cherry
2 **Q. Did he tell you what the incident**
3 **was or did he say just say that there was an**
4 **incident?**

5 A. He said that it was alleged that
6 Gary had attacked a number of people with a
7 pool cue.

8 **Q. Did he tell you who that was**
9 **alleged by?**

10 A. He said the officers who responded
11 to the scene in their report.

12 **Q. What day was this?**

13 A. October 31st.

14 **Q. He called you --**

15 A. I am sorry, I believe he called me
16 on the 31st. Let me correct that, it was
17 either the 31st or the 1st, I am not sure.

18 **Q. So he told you that the officers**
19 **who were at the scene had alleged that Gary**
20 **hit a number of people with a pool cue?**

21 A. Based on what they were told by
22 the people they interviewed.

23 **Q. So it was not the officers who**
24 **were making the allegation, it was the people**
25 **that they interviewed that were making the**

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1 Cherry
2 allegation?
3 A. Yes.
4 Q. At that point in time did Hesse
5 tell you who the officers that were on duty
6 that night?
7 A. I believe he did, yes.
8 Q. Who was on duty that night?
9 A. I believe it was Frank Fiorillo,
10 Thomas Snyder and Kevin Lamm.
11 Q. What else did Officer Hesse tell
12 you during that night?
13 A. He said the chief had fired Gary.
14 Q. Did he tell you why the chief
15 fired him?
16 A. Because of the incident.
17 Q. Did he tell you what his thoughts
18 were on the chief's decision to fire Gary?
19 A. Not at that time, no. You are
20 talking about the original call?
21 Q. Still now about the original call
22 on either the 31st or 1st?
23 A. Right.
24 Q. So he called you at your home?
25 A. Yes.

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1 Cherry
2 Q. Do you know what time of day it
3 was?
4 A. I don't know. I believe it was in
5 the morning, but I am not sure.
6 Q. Was Officer Hesse at the station
7 when called you?
8 A. I don't know.
9 Q. You didn't ask him where he was?
10 A. No.
11 Q. Do you have caller ID at home?
12 A. I do, but I don't recall what the
13 number -- what number it was that he was
14 calling from.
15 Q. Did Hesse generally work morning
16 tours?
17 MR. NOVIKOFF: Objection.
18 A. No, not generally.
19 Q. In 2004 he generally worked the
20 night tour, or the 4 to 12 tour?
21 A. Yes.
22 Q. So this call happened outside of
23 the 4 to 12 period?
24 A. I believe so, yes.
25 Q. What was your response when he

1 Cherry
2 told you that Gary had been fired by the
3 chief?
4 A. I was -- I said why, what
5 happened. I said what happened. Why did he
6 attack these people, that was my first
7 question. And George said I don't know. He
8 said these are the initial reports that we
9 got. He said the chief had assigned him to
10 look into the matter.
11 Q. He actually told you that the
12 chief assigned him to look into the matter?
13 A. He said the chief said to look
14 into it and see what you can find what
15 happened.
16 Q. Do you recall anything else that
17 was stated during that first call?
18 A. Yes. George asked me if I could
19 assist him. I said to do what. He said what
20 do you think we should do. I said I think you
21 should go find some witnesses who were there
22 and find out what happened, take statements
23 from them.
24 Q. Did he respond to that?
25 A. Pardon me?

1 Cherry
2 Q. Did he respond to that suggestion?
3 A. He said can you help me with this.
4 I said to do what. He said can you help me
5 take the statements. I said yes, okay, if you
6 want me to.
7 Q. Did tell you that he would pay you
8 for that time?
9 MR. NOVIKOFF: That George would
10 pay him or the Village --
11 Q. That you would be paid for that
12 time?
13 A. That didn't come up at that time.
14 Q. This is after the season, right?
15 A. Yes, that would be after the
16 season.
17 Q. Had you worked any tours between
18 the end of '04 and this call from George
19 Hesse?
20 A. No.
21 Q. What else was discussed between
22 you and Mr. Hesse during that call?
23 A. That was about it. On the call
24 you are talking about.
25 Q. Well, did you agree that you would

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1 **Cherry**
 2 **help him and assist him?**
 3 A. Yes, sort of reluctantly. I was
 4 finished for the season, I really didn't want
 5 to go back to work, but since he asked me I
 6 said I would help him.
 7 **Q. Did you speak with the chief at**
 8 **all about the Halloween incident?**
 9 A. No.
 10 MR. NOVIKOFF: When you say
 11 chief --
 12 MR. GOODSTADT: Paradiso.
 13 MR. NOVIKOFF: Okay.
 14 A. My cold is acting up.
 15 **Q. So sitting here today have you**
 16 **ever spoken with Chief Paradiso about the**
 17 **Halloween incident?**
 18 A. I don't believe I ever have.
 19 **Q. Did you ever have any**
 20 **correspondence with the chief, when I say**
 21 **chief I mean Chief Paradiso about the**
 22 **Halloween incident?**
 23 A. Any correspondence --
 24 **Q. Written or verbal, I just want to**
 25 **make sure I am as broad as possible?**

1 **Cherry**
 2 A. I was home, probably home to the
 3 best of my recollection.
 4 **Q. You were not at Ocean Beach at**
 5 **all?**
 6 A. No.
 7 **Q. You didn't work any tours that day**
 8 **or that night?**
 9 A. No.
 10 **Q. And at that point in time just so**
 11 **I am clear you actually -- you had the title**
 12 **of seasonal police officer, but you had not**
 13 **been certified by Suffolk County; is that**
 14 **correct?**
 15 MR. NOVIKOFF: Objection.
 16 A. Yes, that is correct.
 17 **Q. So again I think we went over this**
 18 **before, but I just want to go over this time**
 19 **line again. So assuming that those**
 20 **requirements that we went over before were in**
 21 **effect as of that time, you were a civilian;**
 22 **is that correct?**
 23 MR. NOVIKOFF: Objection.
 24 **Q. On that night?**
 25 A. I didn't know that I was a

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1 **Cherry**
 2 A. Yeah, I don't think I had any
 3 interaction with the chief concerning the
 4 Halloween incident.
 5 **Q. And you were not at Houser's the**
 6 **night of the Halloween incident; correct?**
 7 A. No, I was not.
 8 **Q. Have you ever been at the Ocean**
 9 **Beach Halloween party?**
 10 A. No.
 11 **Q. Are you aware of somebody**
 12 **committing suicide at a Halloween party at**
 13 **Ocean Beach, or after the Halloween party?**
 14 MR. NOVIKOFF: Just again, I don't
 15 mean to be interrupting. Is he aware
 16 that someone committed suicide, or is he
 17 aware that someone told him that someone
 18 committed suicide?
 19 MR. GOODSTADT: I don't care how
 20 you are aware, whether you --
 21 MR. NOVIKOFF: Okay.
 22 A. I was not aware that anybody
 23 committed suicide after a Halloween party.
 24 **Q. Where were you the night of the**
 25 **30th into the morning of the 31st?**

1 **Cherry**
 2 civilian at that point. At some time shortly
 3 after that I was aware that we had to take the
 4 Suffolk County Civil Service required tests.
 5 But at that point I was under the assumption
 6 that I was a police officer.
 7 **Q. I know what your assumption was,**
 8 **but now I am asking that you have the**
 9 **knowledge using my assumptions --**
 10 A. On your assumptions that is
 11 correct.
 12 MR. NOVIKOFF: Objection.
 13 **Q. Where is Houser's actually located**
 14 **in respect to the Police Department?**
 15 A. It is on Bay Walk east of the
 16 Police Department maybe about 150 yards, 200
 17 yards away. That is a rough estimate on my
 18 part.
 19 **Q. Had you ever been at Houser's**
 20 **prior to the Halloween incident?**
 21 A. No.
 22 **Q. So you were never there on police**
 23 **business or social reasons?**
 24 A. No.
 25 **Q. That means that you have never**

1 Cherry
2 issued any summonses or tickets to Houser's?

3 A. No.

4 Q. Never issued any summonses or
5 tickets to the bartender at Houser's?

6 A. No. Excuse me, I don't know who
7 the bartender was.

8 Q. I am talking about in connection
9 with their duties as a bartender?

10 A. No.

11 Q. You never issued any summons or
12 tickets or any patrons at Houser's in
13 connection with their patronizing Houser's?

14 A. No.

15 Q. How long did that initial phone
16 call last with Mr. Hesse that you testified to
17 on October 31st and November 1st?

18 A. I would say maybe roughly three or
19 four or five minutes.

20 Q. Did you take any notes of that
21 call?

22 A. No.

23 Q. Do you know whether he took any
24 notes of that call?

25 A. Not that I am aware of.

1 Cherry
2 Q. When was the -- who was the next
3 person that you had any correspondence with
4 with respect to the Halloween incident after
5 that phone call?

6 A. I believe on November 2nd I went
7 into the police station, I went to Ocean
8 Beach.

9 Q. So between speaking with George
10 Hesse on that first call and going to the
11 police station on November 2nd did you speak
12 with anybody or have any correspondence with
13 anyone with respect to the Halloween incident?

14 A. I don't believe so.

15 Q. So there were no subsequent
16 discussions between you and Mr. Hesse prior to
17 going to the Ocean Beach Police Department on
18 the 2nd?

19 A. No.

20 MR. NOVIKOFF: Objection.

21 Q. Did you tell him that you were
22 going to come in on the 2nd?

23 A. Yes. He said can you come in. I
24 said I can't come in today. I said I will
25 come in tomorrow, the 2nd.

1 Cherry

2 Q. Does that refresh your
3 recollection as to when the actual call
4 happened?

5 MR. NOVIKOFF: Objection. You can
6 answer.

7 A. I went in on the 2nd, I am not
8 sure if the call was the day of the 31st or
9 the day of the 1st. I am not sure what day it
10 was.

11 Q. I believe you just testified that
12 you told Hesse that you could come in
13 tomorrow?

14 A. I must have mis-spoke.

15 Q. So you don't recall the time --

16 A. I don't remember which day the
17 call came in, either the 31st or the 1st, one
18 of those two days, I am not sure which. It
19 was four years ago, I don't remember.

20 Q. Now I am actually a little bit
21 confused. You are not sure on the day you
22 went in?

23 A. No. The day I went in was the
24 2nd.

25 Q. Are you not sure that you told him

1 Cherry
2 that you are coming in tomorrow?

3 A. Correct. I said I would come in
4 and I came in whatever day the 2nd was, that
5 was the day I went in.

6 Q. So you told him you were going to
7 come in on the 2nd; did you guys have a plan
8 to meet there on the 2nd?

9 MR. NOVIKOFF: Objection.

10 A. I went in. I don't recall exactly
11 what I said to him as far as when I was coming
12 in. However I did go in -- but I was there on
13 November 2nd.

14 Q. Did you bring anything with you?

15 A. No.

16 Q. When you went on the 2nd?

17 A. No.

18 Q. Were you in uniform?

19 A. No.

20 Q. Did you bring your shield?

21 A. Yes.

22 Q. Did you bring a weapon?

23 A. My off duty weapon.

24 Q. Was that a beach issued weapon?

25 A. No.

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Cherry

Q. Your own personal weapon?

A. Yes.

Q. When you went into the Ocean Beach Police Department on November 2nd who was there?

A. Chief Paradiso was there and Sergeant Hesse was there.

Q. Did you have any communication with Chief Paradiso that day?

A. No. Other than to say hello.

Q. Other than Paradiso and Hesse was anybody else there?

A. Not to my recollection.

Q. Was Paradiso, he was on duty at that time?

A. I don't believe so.

Q. Was Hesse on duty at that time?

A. Yes, he was.

Q. What time on the 2nd did you go in?

A. I believe it was the morning, I took a ferry over, but I couldn't tell you what time exactly.

Q. When you got there did you have a

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Cherry

the private conversation you had with the chief?

A. We sat down. George showed me the reports. I read the reports. And he said what should we do. And as I said in the telephone conversation, let's see if we can find some witnesses who were there that night who can give us some idea what happened. That way you have a foundation to go interview other people.

Q. What reports did he show you?

A. He showed me the case report. The report prepared by I believe it was the officers who were at the scene, and the statements taken by them, and I believe there were pictures that they had taken.

Q. So you reviewed the pictures, the field report?

A. Right.

Q. And the witness statements?

A. That is correct.

Q. Anything else that you reviewed?

A. Whatever was there with the -- I think that was it as far as what was there.

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Cherry

conversation with Hesse?

A. Yes.

Q. How long did the initial conversation last?

A. Well, I was there for a couple of hours. So I had a conversation with Sergeant Hesse, and he had a private conversation with the chief, and then I believe the chief left, he left and I -- George and I sat down and talked about it.

Q. What did you and George discuss in the initial conversation prior to the private conversation with the chief?

A. He thanked me, he called. He said thanks for coming over, I can use some help on this. He had a conversation with the chief. The chief left, and George and I discussed the case.

Q. Did you do anything to prepare for your assistance that you would be providing prior to going there on November 2nd?

A. No.

Q. Where did the conversation happen with George Hesse that you had with him after

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Cherry

You know, what the reports that the officers who were at the scene made. Anything they had in other words I looked at.

Q. And prior to looking at the reports what else did you and Mr. Hesse discuss?

A. As I said I suggested that we try to find some witnesses who were there, and he said he would try to find out who was there that we could talk and interview them. We also had a memo sent by a Budd Jaegger indicating that he had heard that Gary had gotten fired, this was in the statement, and that explained how Gary had came to the defense of his wife who was attacked by a person coming out of the lady's room, or coming in the bathroom area of the Houser's Bar.

Q. Do you know whether Budd Jaegger had a personal relationship with Hesse?

A. I don't know what the relationship was. He was also the -- he ran the theater over there at Ocean Beach.

MR. NOVIKOFF: The what?

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1 Cherry
2 THE WITNESS: The theater, the
3 movie theater.
4 A. I don't know if they had a
5 relationship at that time. I still don't know
6 what the relationship was at that time with
7 Budd Jaegger.
8 **Q. You say you still don't know, is**
9 **that what you just said?**
10 A. What the relationship was at that
11 time I don't know. If I may, you have to
12 remember George was over there, the supervisor
13 of the policemen over there for fourteen years
14 and he knew a lot of people over there. So I
15 guess he knew who Budd was. I don't know if
16 there was any other relationship other than
17 that.
18 **Q. Do you know what Officer Hesse's**
19 **relationship was with Jean Jaegger?**
20 A. No.
21 **Q. During your initial discussion**
22 **with George Hesse when you arrived there on**
23 **the 2nd, when I say initial discussion I am**
24 **talking about the discussion you had after the**
25 **private discussion with the chief, did you**

1 Cherry
2 **Q. Well, you knew that Budd Jaegger**
3 **was a witness; correct?**
4 A. Yes.
5 **Q. So you knew at least one witness;**
6 **right?**
7 A. Yes, at that point.
8 MR. NOVIKOFF: Objection.
9 A. Excuse me, he was not a witness to
10 what happened, he was relaying what his wife
11 had told him happened in his memo.
12 MR. NOVIKOFF: That was the basis
13 for my objection to the question.
14 **Q. Did you contact Budd Jaegger as**
15 **part of your investigation?**
16 A. No, not Budd, I didn't contact
17 Budd.
18 **Q. Do you know whether Mr. Hesse did?**
19 A. I don't know for sure. I don't
20 know if he had discussions with him or not
21 about the memo.
22 **Q. The statement that you had from**
23 **Budd Jaegger, do you know whether that was**
24 **solicited or was it sent in on his own?**
25 A. I believe it was sent in on his

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1 Cherry
2 **guys discuss the goals of the investigation?**
3 MR. NOVIKOFF: Objection. You can
4 answer.
5 A. The goals of the investigation;
6 finding out what happened.
7 **Q. Did you discuss that?**
8 A. Yes.
9 **Q. Did you discuss as one of the**
10 **goals being trying to get Gary Bossetti's job**
11 **back?**
12 A. No. The object of the
13 investigation was to find out what happened.
14 **Q. Officer Hesse didn't tell you that**
15 **one of his goals was to get Gary Bossetti's**
16 **job back?**
17 A. No.
18 **Q. When you decided amongst**
19 **yourselves that you would try to find**
20 **witnesses to take statements from, did you**
21 **prepare a list of witnesses?**
22 MR. NOVIKOFF: Objection.
23 A. No because I didn't know who was
24 witnesses at that time. As it turned out
25 witnesses came forward.

1 Cherry
2 own.
3 **Q. At any point in the investigation**
4 **did you speak with any of the three officers**
5 **who were on duty that night?**
6 A. No.
7 **Q. At any point in the investigation**
8 **did you speak with Brian Van Koot?**
9 A. No.
10 **Q. Did you attempt to speak to Brian**
11 **Van Koot at any point during the**
12 **investigation?**
13 MR. NOVIKOFF: Objection.
14 A. No.
15 **Q. Did you speak with Christopher**
16 **Schalik at any point during the investigation?**
17 A. No.
18 **Q. Did you attempt to speak with**
19 **Mr. Schalik at any point in time during the**
20 **investigation?**
21 A. No.
22 **Q. Did you speak with John Tesoro at**
23 **any point during your investigation?**
24 A. No.
25 **Q. Did you attempt to speak with**

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1 Cherry

2 **Mr. Tesoro at any point during your**
3 **investigation?**4 A. No. If I may point out, you said
5 referring to my investigation, it was I was
6 assisting Sergeant Hesse in the investigation.7 **Q. That is fair. When I say your**
8 **investigation I am referring to the**
9 **investigation that was performed by you and**
10 **Mr. Hesse?**

11 A. Okay.

12 **Q. Do you know whether Mr. Hesse**
13 **spoke to Brian Van Koot as part of the**
14 **investigation?**

15 A. I don't know.

16 **Q. Do you know whether he attempted**
17 **to speak to Mr. Van Koot as part of the**
18 **investigation?**

19 A. I don't know.

20 **Q. Do you know whether Mr. Hesse**
21 **spoke with Chris Schalik as part of his**
22 **investigation?**

23 A. I don't know.

24 **Q. Do you know whether he attempt to**
25 **do speak with Mr. Schalik as part of the**

1 Cherry

2 these people.

3 We were trying to get some
4 background information as to what happened
5 prior to the assault to see if there was any
6 reason why Gary would assault somebody.7 **Q. I think you testified before that**
8 **these statements were incomplete; is that**
9 **correct?**

10 A. That is correct.

11 **Q. So why wouldn't you speak to the**
12 **three people who you know were witnesses about**
13 **what happened before the assault to complete**
14 **their statements?**15 A. It was clear from the statements
16 that they took that they were accusing Gary
17 Bossetti of assaulting them. We were trying
18 to find out by interviewing independent
19 witnesses what transpired to cause that
20 assault, if in fact an assault had taken
21 place. We were trying to get some background
22 information by interviewing witnesses to see
23 if there was any reason why Gary would assault
24 somebody.25 **Q. Don't you think it would be**

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1 Cherry

2 **investigation?**

3 A. I don't know.

4 **Q. Do you know whether Mr. Hesse**
5 **spoke to John Tesoro as part of the**
6 **investigation?**

7 A. I don't know.

8 **Q. Do you know whether he attempted**
9 **to speak to Mr. Tesoro as part of the**
10 **investigation?**

11 A. I don't know.

12 **Q. At that point in time you knew**
13 **that the three of them were witnesses; is that**
14 **correct?**

15 A. Yes.

16 **Q. Why wouldn't you speak with them?**17 A. They were -- they had -- we had
18 their statements from the -- the officers took
19 statements from them. My part of the
20 investigation was to find out what happened as
21 far as -- they never spoke to the officer they
22 went to assist. We were trying to find out
23 what happened -- why did Gary if he assaulted
24 these people, what was -- if Gary had
25 assaulted these people, why he had assaulted

1 Cherry

2 **important also for you to speak to the alleged**
3 **victims of the assault?**4 MR. NOVIKOFF: Objection. You can
5 answer.

6 A. Not at that point.

7 **Q. At any point do you think it would**
8 **have been important for you to speak or for**
9 **Mr. Hesse to speak to the victims of the**
10 **assault as part of the investigation?**11 MR. NOVIKOFF: Objection. Only as
12 to Mr. Hesse. Foundation. You can
13 answer.14 A. It depends what transpired. You
15 are talking about the point where we have not
16 interviewed anybody yet. Maybe at a point --
17 **Q. I am talking about at any point**
18 **during the investigation that was undertaken**
19 **in connection with the Halloween incident,**
20 **don't you think it would have been important**
21 **for you to speak to, or Mr. Hesse to speak**
22 **with the alleged victims of the alleged**
23 **assault?**

24 MR. NOVIKOFF: Objection.

25 A. Possibly.

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1 Cherry

2 **Q. What do you mean by possibly?**3 A. It may or may not be, it depends
4 on the circumstances that happened prior to
5 them being assaulted.6 **Q. So you testified before that there
7 was nothing in these statements that addressed
8 what happened prior to the assaults; correct?**

9 MR. NOVIKOFF: Objection.

10 A. That is correct.

11 MR. NOVIKOFF: Mr. Cherry, you got
12 to let Mr. Goodstadt ask the questions
13 and you got to give me a couple of
14 seconds to object and then you answer,
15 or else the court reporter is going to
16 shoot himself in the head.

17 (Record read.)

18 **Q. And you were trying to figure out
19 what happened leading up to the assaults;
20 correct?**

21 A. Correct.

22 **Q. So don't you think it would be
23 important to speak to the alleged victims of
24 an assault to get their side of the story
25 about what happened leading to the assault?**

1 Cherry

2 was and what happened prior to them being
3 assaulted. I will give you one -- it may or
4 may not have been important to speak to them.
5 If you develop enough evidence that they
6 committed a crime it may not be necessary to
7 speak to them.8 **Q. So you would rely on other
9 people's statements without speaking to the
10 alleged victims to have a complete picture of
11 what happened that night?**

12 A. Yes.

13 **Q. It is your testimony; right?**14 A. I am not saying that they should
15 not be interviewed, I am saying that we
16 didn't. It may not be necessary depending on
17 what evidence came forward.18 **Q. Sitting here today knowing what
19 evidence came forward don't you think it was
20 important that you should have spoken with the
21 alleged victims?**

22 MR. NOVIKOFF: Objection.

23 A. No.

24 MR. NOVIKOFF: You got to give me
25 a chance to object.

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1 Cherry

2 MR. NOVIKOFF: Objection. You can
3 answer.4 A. Well, the officers that responded
5 should have gotten that.6 **Q. But they didn't; correct?**

7 A. Correct.

8 **Q. So you were --**9 MR. NOVIKOFF: Objection to that.
10 You can answer the question.

11 A. What was the question?

12 **Q. But they didn't; correct?**

13 A. Correct.

14 MR. NOVIKOFF: Objection.

15 **Q. You were brought in to assist in
16 an investigation of the incident?**

17 A. Correct.

18 **Q. Don't you think as part of your
19 investigation that you should have gotten that
20 information that you testified made the report
21 incomplete?**

22 MR. NOVIKOFF: Objection.

23 A. It would depend on what
24 information you elicited from other witnesses.
25 Depending on what happened, what the situation

1 Cherry

2 **Q. Why not?**3 A. Because the person was convicted
4 of a crime. He took a plea and he was
5 convicted.6 **Q. When was the person convicted?**

7 A. He pled guilty in court.

8 **Q. When?**

9 A. Mr. Van Koot.

10 **Q. When?**

11 A. I don't know the exact date.

12 **Q. Is it your testimony that if
13 you --**14 MR. NOVIKOFF: You asked him given
15 what you know now. He answered the
16 question because he now knows that they
17 were convicted. Another question you
18 could ask Andrew may be more appropriate,
19 but he did answer your question.20 **Q. So at any point prior to them
21 being convicted did you think it would be
22 important to speak to the alleged victims of
23 an assault?**24 MR. NOVIKOFF: Objection. Asked
25 and answered. But you can answer.

1 Cherry
 2 A. It may not be, no.
 3 **Q. So prior to December 12th, the**
 4 **date that they took the plea, you don't**
 5 **believe that it would have been important to**
 6 **speak to the alleged victims of an assault --**
 7 **of the assault during your investigation of**
 8 **what happened during that assault?**
 9 MR. NOVIKOFF: Objection. Answer.
 10 A. The investigation showed that it
 11 was not an assault, they were not assaulted.
 12 That Gary acted in defense of a third person
 13 and acted in self defense as far as our
 14 investigation showed. Therefore it wouldn't
 15 be necessary to talk to them.
 16 **Q. You say as far as our**
 17 **investigation showed?**
 18 A. Yes.
 19 **Q. That is based on statements made**
 20 **by people other than the victims; is that**
 21 **correct?**
 22 A. That is correct.
 23 **Q. So you never got, other than from**
 24 **reading the incomplete statements, you never**
 25 **got the victims' side of the story?**

1 Cherry
 2 MR. NOVIKOFF: Objection to the
 3 characterization. You can answer.
 4 A. It turned out they were not
 5 victims.
 6 **Q. Now, would you mark this as Cherry**
 7 **Exhibit 9, report.**
 8 **(Cherry Exhibit 9, report, marked**
 9 **for identification, as of this date.)**
 10 **Q. I placed in front of Mr. Cherry**
 11 **what has been marked as Cherry Exhibit 9, a**
 12 **one-page document bearing Bates number 3183.**
 13 **Mr. Cherry, do you recognize the**
 14 **document that has been marked as 3183?**
 15 A. This is a statement --
 16 MR. NOVIKOFF: The question is do
 17 you recognize it?
 18 A. Yes, I recognize it.
 19 **Q. What is it?**
 20 A. Pardon me.
 21 **Q. What is that document?**
 22 A. A statement taken by Frank
 23 Fiorillo from Brian Van Koot.
 24 **Q. Was this one of the statements,**
 25 **that is -- that was part of the documentation**

1 Cherry
 2 **that you had on the morning of November 2nd?**
 3 A. Yes.
 4 **Q. And is this one of the statements**
 5 **that you characterized as incomplete?**
 6 A. Yes.
 7 **Q. What is incomplete about the**
 8 **statement?**
 9 A. It doesn't say what they were
 10 doing prior to him being hit in the face, or
 11 if there was any reason to be hit in the face,
 12 what was it. What was the -- my throat is
 13 getting dry.
 14 MR. NOVIKOFF: Here is some water.
 15 **Q. So sitting here today you don't**
 16 **know what Mr. Van Koot's position is with**
 17 **respect to what caused it; is that correct?**
 18 A. Today I know.
 19 **Q. You do know?**
 20 A. Yes.
 21 **Q. How do you know that?**
 22 A. From the statements taken from the
 23 other witnesses.
 24 **Q. How do you know that, what Mr. Van**
 25 **Koot's position was based on the statements**

1 Cherry
 2 **taken from other witnesses?**
 3 A. What his position was, because
 4 Jeannie Jaegger said that Mr. Van Koot was --
 5 Mr. Van Koot had grabbed her throat and put
 6 her up against the wall in the lady's room at
 7 the Houser's Bar.
 8 **Q. I am not talking about what his**
 9 **physical position was in the bar, I am talking**
 10 **about what his story is, what led up to the**
 11 **assault?**
 12 A. I mis-understood the question.
 13 Could you repeat the question.
 14 **Q. Sitting here today you don't know**
 15 **what Mr. Van Koot's position is or story was**
 16 **as to what led to the assault; correct?**
 17 A. Other than what I learned from the
 18 statements taken from Jeannie Jaegger and
 19 Elyse Myller.
 20 **Q. Explain to me how you know what**
 21 **Mr. Van Koot's story is, or his position is**
 22 **based on statements by other people?**
 23 A. It appears that from the
 24 statements that he was in the lady's room with
 25 a female. The people outside wanted to use

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1 Cherry
2 the bathroom, and it appears that he got upset
3 because they were knocking on the door to go
4 in, and he came out of the bathroom and
5 grabbed Jeannie Jaegger by the throat and
6 pushed her up against the wall because he was
7 being interrupted from whatever he was doing
8 in the lady's room.
9 **Q. I understand that that is a**
10 **conclusion that you reached based on Jeannie**
11 **Jaegger and Elyse Myller's statement.**
12 A. Right.
13 **Q. My question to you is you don't**
14 **know what Mr. Van Koot's story would be as to**
15 **what led up to the assault; correct?**
16 A. Based on this?
17 **Q. Based on anything?**
18 A. I don't know what -- this is
19 evidence, the statements gave us some idea of
20 what transpired.
21 **Q. I understand that you reached a**
22 **conclusion.**
23 A. Right, based on the statements.
24 MR. NOVIKOFF: Hold on, let him
25 ask the question, say what he wants to

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1 Cherry
2 say.
3 **Q. I understand that it is your**
4 **position that you reached a conclusion of what**
5 **transpired based on witness statements. My**
6 **question to you is not what conclusions you**
7 **reached, my question to you is sitting here**
8 **today you don't know what Mr. Van Koot's**
9 **explanation of the incidents that led to the**
10 **assault were; is that correct?**
11 MR. NOVIKOFF: Objection. Asked
12 and answered. You can answer.
13 MR. GOODSTADT: It was answered,
14 but the question wasn't answered.
15 A. I don't understand the question as
16 far as --
17 **Q. Let me give you a hypothetical.**
18 A. -- as far as Mr. Van Koot's
19 reason --
20 **Q. For example you don't know if**
21 **Mr. Van Koot agrees with the fact that**
22 **somebody knocked on the bathroom door, he was**
23 **interrupted and came out and straggled Jeannie**
24 **Jaegger; correct?**
25 A. When he pled guilty he allocuted

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1 Cherry
2 to what he did.
3 **Q. That he knocked on the door and**
4 **straggled Jeannie Jaegger?**
5 (Record read.)
6 A. I believe, I don't have the
7 allocution in front of me, I don't know if you
8 have, but he admitted to grabbing her by the
9 throat and throwing her up against the wall.
10 **Q. Were you there when he allocuted?**
11 A. No.
12 **Q. Do you know whether he was telling**
13 **that story as part of an allocution to accept**
14 **a plea, or is that what he actually believed**
15 **happened?**
16 MR. NOVIKOFF: Objection.
17 A. He testified under oath, so I
18 assume that is what happened.
19 **Q. Just as you are testifying under**
20 **oath today; is that correct?**
21 A. Yes, sir.
22 **Q. Prior to him allocuting you didn't**
23 **know what his explanation of the events**
24 **leading up to the assault were; is that**
25 **correct?**

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1 Cherry
2 A. That is correct.
3 **Q. And you made no effort to find**
4 **out?**
5 A. No.
6 **Q. Correct?**
7 A. Right.
8 MR. GOODSTADT: Would you mark
9 this document as Cherry Exhibit 10,
10 report.
11 (Cherry Exhibit 10, report, marked
12 for identification, as of this date.)
13 **Q. Now I placed in front of**
14 **Mr. Cherry what is marked as Cherry Exhibit**
15 **10, it is a one-page document exhibit Bates**
16 **number 3185.**
17 **Mr. Cherry, do you recognize the**
18 **document that has been marked as Cherry**
19 **Exhibit 10?**
20 A. This is a statement taken by Kevin
21 Lamm from Christopher Schalik.
22 **Q. Was this one of the documents that**
23 **were part of the packet of documentation that**
24 **you received the morning of the November 2nd**
25 **when you arrived at the police station?**

1 **Cherry**
 2 A. That I looked at, yes.
 3 **Q. Did you ever discuss with George**
 4 **Hesse whether you should speak with the**
 5 **alleged victims?**
 6 A. I didn't.
 7 **Q. Never had any discussions with him**
 8 **whether you guys should as part of the**
 9 **investigation speak with the alleged victims?**
 10 A. My part of the investigation was
 11 to locate witnesses who eventually came
 12 forward and interview them. Once those
 13 statements were taken, the last one being
 14 November 7th, that was the end of my
 15 involvement in the case.
 16 So we had no discussions about
 17 whether to speak to the three -- the original
 18 complainants or not.
 19 **Q. Would you mark this document as**
 20 **Cherry Exhibit 11, report.**
 21 **(Cherry Exhibit 11, report, marked**
 22 **for identification, as of this date.)**
 23 **Q. I placed in front of Mr. Cherry**
 24 **what has now been marked as Cherry Exhibit 11,**
 25 **a one-page document bearing Bates number 3186.**

1 **Cherry**
 2 **Mr. Cherry, do you recognize this**
 3 **document?**
 4 A. Yes, this is a statement taken by
 5 Thomas Snyder from John A. Tesoro.
 6 **Q. You see that Mr. Tesoro alleges**
 7 **that an unknown male grabbed a pool cue and**
 8 **looked at him and then hit him in the head at**
 9 **least twice and also in his right elbow. Do**
 10 **you see that?**
 11 A. Where is this; this is in the body
 12 of the statement?
 13 **Q. In the body of the statement?**
 14 MR. NOVIKOFF: What line?
 15 **Q. It starts on the end of the third**
 16 **line.**
 17 MR. NOVIKOFF: Got it, okay.
 18 A. Okay, I see that.
 19 **Q. Was that the first time that you**
 20 **learned -- reading these statements is that**
 21 **the first time that you learned that there was**
 22 **an allegation that someone had been hit by a**
 23 **pool cue?**
 24 A. Yes.
 25 **Q. So during your conversations with**

1 **Cherry**
 2 **Hesse on the 31st or 1st he never mentioned**
 3 **that there was an allegation that someone had**
 4 **been hit with a pool cue?**
 5 MR. NOVIKOFF: Objection.
 6 A. Yes, I think he told me that. I
 7 think I may have testified to that, that
 8 someone accused Gary Bossetti of assaulting
 9 someone with a pool cue.
 10 **Q. So reading this documentation was**
 11 **not the first time that you learned that there**
 12 **was an allegation that someone was hit with a**
 13 **pool cue?**
 14 A. Right.
 15 **Q. Look back at Cherry Exhibit 10, if**
 16 **you look at the end of the fifth line in the**
 17 **body of the statement it says that he picked**
 18 **up a pool stick and hit me with the pool stick**
 19 **on my left arm causing the pool stick to**
 20 **break. Do you see that?**
 21 A. Yes, I do.
 22 **Q. Would you mark as Cherry Exhibit**
 23 **12, incident report.**
 24 **(Cherry Exhibit 12, incident**
 25 **report, marked for identification, as of**

1 **Cherry**
 2 **this date.)**
 3 **Q. I now place in front of Mr. Cherry**
 4 **what has been marked as Cherry Exhibit 12,**
 5 **one-page exhibit Bates number 3184.**
 6 **Mr. Cherry, do you recognize this**
 7 **document that has been marked as Cherry**
 8 **Exhibit 12?**
 9 A. Yes, I do.
 10 **Q. What is this document?**
 11 A. It is a field report prepared by
 12 Thomas Snyder and reference to the incident
 13 that happened in Houser's Bar.
 14 **Q. Was this part of the documentation**
 15 **that was given to you the morning of November**
 16 **2nd when you arrived at the police station?**
 17 A. Yes.
 18 **Q. Again this references that a pool**
 19 **cue was used to hit two of the alleged**
 20 **victims?**
 21 MR. NOVIKOFF: Objection. You can
 22 answer.
 23 A. Yes.
 24 **Q. And in the documentation that has**
 25 **now been marked as Cherry 9, 10, 11 and 12, do**

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1 Cherry
 2 you see anywhere where it says that Gary
 3 Bossetti assaulted somebody with a pool cue?
 4 A. No.
 5 Q. So based on your reading of the
 6 statements that had come in that you got that
 7 morning, that is not where you learned that
 8 Gary Bossetti was alleged to have been the one
 9 to have been using the pool cue, that was some
 10 other source?
 11 MR. NOVIKOFF: Objection.
 12 A. George told me that Gary had been
 13 fired for assaulting the people with the pool
 14 cue.
 15 Q. You learned that Gary Bossetti was
 16 the person that was being charged, or who was
 17 alleged to have hit somebody with a pool cue
 18 through Hesse, not through the documentation;
 19 is that correct?
 20 MR. NOVIKOFF: Objection.
 21 A. Yes.
 22 MR. GOODSTADT: Would you mark
 23 this document as Cherry Exhibit 13,
 24 photocopy of a photograph.
 25 (Cherry Exhibit 13, photocopy of a

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1 Cherry
 2 photograph, marked for identification, as
 3 of this date.)
 4 Q. I place in front of Mr. Cherry
 5 what is marked as Cherry Exhibit 13, a
 6 three-page document bearing Bates numbers
 7 consecutively paginated 3187 to 3189.
 8 Mr. Cherry, do you recognize these
 9 documents that were marked as Exhibit 13?
 10 A. Yes.
 11 Q. What are these documents?
 12 A. I believe these are pictures of
 13 Mr. Van Koot that were taken by the officers
 14 the night of the incident.
 15 Q. Was this part of the documentation
 16 that you received on November 2nd?
 17 A. Yes.
 18 MR. NOVIKOFF: Hold on one second,
 19 I apologize. We have been doing this for
 20 about two hours now, did I miss the
 21 changing of the tape to go to tape 4?
 22 THE VIDEOGRAPHER: The last break
 23 we changed.
 24 MR. NOVIKOFF: Thanks.
 25 (Record read.)

1 Cherry
 2 Q. Let me ask you, how did the
 3 documents that have been marked in Cherry 9
 4 through Cherry 13, how did those documents or
 5 what role did those documents if any play in
 6 your investigation?
 7 A. The documents you just showed me,
 8 they put the -- to be developed -- defendants
 9 at the scene of the crime saying they were
 10 assaulted and I think one of them indicates
 11 that the person that was being assaulted, I
 12 have to read these over, said that the person
 13 who assaulted them said that he was a police
 14 officer or a policeman, I don't remember the
 15 exact verbiage.
 16 Q. I think he is reviewing something
 17 right now.
 18 A. Yes. The male hitting me with the
 19 pool cue said he was a cop. That is from the
 20 statement of Exhibit 11.
 21 Q. As part of your investigation did
 22 you --
 23 A. Can I read the other two?
 24 Q. Go ahead and read it.
 25 A. Again the statement of Chris

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1 Cherry
 2 Schalik, Exhibit number 10, also indicates
 3 that the person who was hitting him saying he
 4 was a cop approximately ten times.
 5 Q. I believe the question is what
 6 role in your investigation did those
 7 statements play?
 8 MR. NOVIKOFF: Are you done with
 9 the question?
 10 MR. GOODSTADT: That is the
 11 question.
 12 MR. NOVIKOFF: Objection, you may
 13 answer.
 14 A. What role the statements helped us
 15 with this investigation; is that correct?
 16 Q. Yes.
 17 A. It indicated that the person who
 18 allegedly assaulted the three people, two of
 19 the statements as indicated alleged that the
 20 person said he was a cop. In the
 21 investigation Gary never, you know, he
 22 identified himself as a police officer to
 23 these people.
 24 It was my understanding reviewing
 25 these statements that Gary -- what I

1 Cherry
 2 determined from these statements that we took
 3 from the other witnesses that Gary went to aid
 4 Jeannie Jaegger, got into an altercation with
 5 Van Koot. Van Koot's friends seeing the
 6 altercation intervened instead of breaking up
 7 the fight, they assaulted Gary Bossetti.
 8 That was the outcome of my take on
 9 the investigation, or what was showed me.
 10 **Q. Did you discredit anything in**
 11 **those witness statements that have been marked**
 12 **as 9, 10 and 11?**
 13 MR. NOVIKOFF: You can answer the
 14 question. If you need to read the
 15 statements.
 16 MR. GOODSTADT: He just read them.
 17 But he can read them again.
 18 A. No, they say they were assaulted.
 19 The investigation in my opinion showed that
 20 Gary Bossetti was defending himself against a
 21 three person assault.
 22 **Q. Did you believe that Gary Bossetti**
 23 **choked Brian Van Koot?**
 24 MR. NOVIKOFF: Objection. You can
 25 answer.

1 Cherry
 2 A. I don't know. I know he was
 3 defending himself against an assault. I don't
 4 know what action he took to ward off the
 5 assault, whether that is true or not.
 6 **Q. So you didn't have an opinion as**
 7 **part of your investigation one way or the**
 8 **other as to whether Gary Bossetti choked Brian**
 9 **Van Koot?**
 10 A. In defending himself he may have,
 11 I don't know. I don't know.
 12 **Q. Is there a level of force in your**
 13 **mind that is acceptable for a police officer**
 14 **to defend himself?**
 15 MR. NOVIKOFF: Objection. You can
 16 answer.
 17 A. Yes.
 18 **Q. Is there a level of force in your**
 19 **mind that is unacceptable for a police officer**
 20 **to defend himself?**
 21 A. Yes.
 22 MR. NOVIKOFF: Objection.
 23 **Q. Do you believe that Mr. Bossetti,**
 24 **Gary Bossetti, hit John Tesoro with a pool cue**
 25 **in the hit?**

1 Cherry
 2 A. I don't know.
 3 **Q. So you didn't reach a conclusion**
 4 **one way or the other?**
 5 A. No. In the part of the
 6 investigation that I had I didn't interview
 7 Officer Bossetti, I don't know what actions he
 8 took to defend himself.
 9 **Q. Did you speak to Officer Bossetti**
 10 **at all as part of the investigation?**
 11 A. I didn't, no.
 12 **Q. Did you speak to his brother**
 13 **Richard Bossetti at all as part of the**
 14 **investigation?**
 15 A. No.
 16 **Q. Just so I am clear here, so you**
 17 **didn't speak to any of the parties who were**
 18 **actually involved in the alleged assault,**
 19 **meaning that were part of the fight?**
 20 A. That is correct.
 21 **Q. And did you believe that**
 22 **Christopher Schalik had been hit in the arm**
 23 **with a pool cue that caused the pool cue to**
 24 **break?**
 25 A. I don't know.

1 Cherry
 2 MR. NOVIKOFF: Objection.
 3 A. Same answer that I gave before, I
 4 don't know.
 5 **Q. So you didn't reach a conclusion**
 6 **one way or the other?**
 7 MR. NOVIKOFF: Objection.
 8 A. I don't know what actions Officer
 9 Bossetti took to defend himself.
 10 **Q. Did you ever speak with anybody**
 11 **from Ocean Beach Rescue about the Halloween**
 12 **incident?**
 13 A. No.
 14 **Q. Did you ever speak to Joe Loeffler**
 15 **about the Halloween incident?**
 16 A. No. During the investigation
 17 timeframe?
 18 **Q. At any point in time?**
 19 A. Other than when the suit came up,
 20 they said there is an allegation that the --
 21 we were covering up a brutality case to the
 22 Halloween incident. I said I couldn't
 23 understand what -- what they could possibly
 24 say that we covered up.
 25 **Q. Did Joe Loeffler tell you that he**

A3402

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1 Cherry
2 was there the night of Halloween?
3 MR. NOVIKOFF: Objection.
4 A. I don't recall.
5 Q. As you sit here today you don't
6 know that Joseph Loeffler actually drove the
7 ambulance on the night of the Halloween
8 incident?
9 MR. NOVIKOFF: Objection.
10 A. He told me or somebody told me
11 that he drove the ambulance. I am not sure
12 who or when I was told that. It was probably
13 sometime after the initial investigation.
14 Q. So as part of the investigation
15 you didn't know that Joseph Loeffler drove the
16 ambulance?
17 MR. NOVIKOFF: Objection.
18 A. No.
19 Q. Did you ever hear that Joe
20 Loeffler that night said that he believed what
21 happened to Mr. Van Koot to be an assault
22 second?
23 MR. NOVIKOFF: Objection.
24 A. I know -- I recall somebody saying
25 that, but I don't know when I learned that.

1 Cherry
2 the best of my recollection. I took a
3 statement from Sean O'Rourke, I am not quite
4 sure on the date, I don't know if it was
5 November -- I am not sure of the date on Sean
6 O'Rourke. I also interviewed Ian Levine, or
7 took statements from him.
8 Q. Do you know what date that was?
9 A. I am not quite sure of the date.
10 I believe it was sometime between the 2nd and
11 7th.
12 Q. And other than for taking those
13 statements or receiving those statements and
14 making those phone calls what else did you do
15 on November 2nd in connection with your
16 investigation?
17 A. I am not sure if I -- I may have
18 taken a statement from one of the -- either
19 the -- either Ian Levine or Sean O'Rourke on
20 that date, but I am not sure which one.
21 Q. Did you do anything else as part
22 of the investigation on that day.
23 A. I checked all three of the Van
24 Koot -- all three of the people involved for
25 warrants and prior records, and I think I made

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1 Cherry
2 Q. Do you recall who said it?
3 A. No.
4 Q. Do you recall when you learned it?
5 A. No.
6 Q. During your investigation were you
7 aware that one of the alleged victims, meaning
8 Schalik, Tesoro or Van Koot, pointed to
9 Richard Bossetti in the bar and said the
10 person who assaulted us looked like him?
11 MR. NOVIKOFF: Objection.
12 A. I may have read that in one of the
13 officers statements after the investigation,
14 but not prior to that.
15 Q. And not during your investigation?
16 A. No.
17 Q. Who did you interview as part of
18 the investigation?
19 A. I spoke to Jeannie Jaegger over
20 the telephone I believe on November 2nd, and I
21 interviewed her at her home on November 7th I
22 believe. I interviewed Elyse Myller on the
23 phone.
24 Q. What date was that?
25 A. That was on November 2nd also to

1 Cherry
2 a note on that. I think one had a failure to
3 appear on an alcohol violation or something
4 like that, or an open alcohol violation.
5 Other than that there was no priors, no
6 arrests.
7 Q. Why did you do that check?
8 A. Just a routine to see who I was
9 dealing with. Routine matter.
10 Q. Did you do a check on priors for
11 the witnesses whose statements you were
12 taking?
13 A. No.
14 Q. So is it routine to take a
15 background check or a check of priors for
16 complainants?
17 A. Well, I just checked to see if
18 they had any criminal background. For
19 complainants, not normally no.
20 Q. So why did you do it for the three
21 of them?
22 A. I wanted to see what their
23 background was.
24 Q. Why?
25 A. That is what I do usually before I

1 Cherry
2 interview a witness. Sometimes I will check
3 the background to see what -- if I don't know
4 them or if I don't have any dealings with them
5 before just to see what their backgrounds are.

6 **Q. Sir, you just testified that you**
7 **didn't interview the three of them?**

8 A. I didn't.

9 MR. NOVIKOFF: Objection.

10 **Q. What do you mean you do a**
11 **background check of a witness before you**
12 **interview them?**

13 A. I did a background check on them
14 to see what their priors were because I was
15 curious, I wanted to see if they had any
16 priors.

17 **Q. So now you are saying because you**
18 **were curious and --**

19 MR. NOVIKOFF: Objection. You can
20 answer.

21 **Q. Now you are saying because you**
22 **were curious and you objected.**

23 MR. NOVIKOFF: I apologize.

24 **Q. You told him he could answer it.**
25 **Before you said that you checked**

1 Cherry

2 **background?**

3 A. No.

4 **Q. Did you check Elyse Myller's**
5 **background?**

6 A. No.

7 **Q. Why not?**

8 A. I just wanted to see the people we
9 were dealing with, the three other people who
10 were in the fight, had any priors. That is
11 just something that I did.

12 **Q. Did you check Richard Bossetti's**
13 **background?**

14 A. No. He is a police officer, why
15 would I check his background?

16 **Q. Was he a certified police officer**
17 **at the time?**

18 MR. NOVIKOFF: Objection.

19 A. I didn't check his background.

20 **Q. Did anyone tell you to check their**
21 **background or you did it on your own?**

22 A. My own.

23 **Q. How did you go about checking**
24 **their background?**

25 A. I am not sure now, I called the

1 Cherry
2 **the background, and I asked why. You said you**
3 **usually check the background of a witness**
4 **before you interview them; is that correct?**

5 A. I said that, yes.

6 **Q. Then I said you didn't interview**
7 **these guys?**

8 A. Right.

9 **Q. Correct?**

10 A. Correct.

11 MR. NOVIKOFF: Objection.

12 **Q. So why did you check their**
13 **backgrounds?**

14 A. I wanted to see if they had any
15 prior incidents.

16 **Q. The question is why?**

17 MR. NOVIKOFF: Objection.

18 A. I just did.

19 **Q. Did you check Sean O'Rourke's**
20 **background?**

21 A. No.

22 **Q. Did you check Jeannie Jaeger's**
23 **background?**

24 A. No.

25 **Q. Did you check Budd Jaegger's**

1 Cherry

2 Sheriff or the Suffolk County Records Bureau,
3 I am not sure which, and asked for a
4 background check for priors and warrants.

5 **Q. When you called over there did you**
6 **hold yourself out to be a police officer?**

7 A. Yes.

8 **Q. So myself who is not a police**
9 **officer can't just call up and get a**
10 **background check; is that correct?**

11 A. That is correct.

12 MR. GOODSTADT: Would you mark
13 this handwritten note, Cherry Exhibit 14,
14 handwritten note.

15 (Cherry Exhibit 14, handwritten
16 note, marked for identification, as of
17 this date.)

18 **Q. I placed in front of Mr. Cherry**
19 **what is now marked as Cherry Exhibit 14, a**
20 **one-page document exhibit with the Bates**
21 **number 3179.**

22 A. Yes.

23 **Q. Mr. Cherry, do you recognize this**
24 **document?**

25 A. Yes, sir.

A3404

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1 Cherry

2 **Q. What is this document?**3 A. This is notes I took on the
4 warrant checks, prior checks for the three
5 subjects in this case.6 **Q. Did you take these as you were on**
7 **the phone with the sheriff or whoever you**
8 **spoke with?**

9 A. Yes. Suffolk County.

10 **Q. Did you do any background checks**
11 **of anybody else as part of your investigation**
12 **aside from these three people?**

13 A. No.

14 **Q. Were you aware that Sean O'Rourke**
15 **had been arrested for cocaine possession in**
16 **Ocean Beach?**

17 A. Yes, I was.

18 **Q. Are you aware whether he had ever**
19 **been arrested prior to that time?**

20 A. No.

21 **Q. Were you aware whether there were**
22 **any outstanding warrants?**

23 A. No.

24 **Q. I believe you also testified that**
25 **there was a statement in the documentation**

1 Cherry

2 **Q. Do you know whether Ms. Myller**
3 **came forward on her own to provide a**
4 **statement?**

5 A. I am not sure. I am not sure.

6 **Q. So you don't know whether somebody**
7 **requested that from her or whether she did it**
8 **on her own?**

9 A. I don't know.

10 **Q. Do you know whether George Hesse**
11 **had any relationship with Elyse Myller?**

12 A. Not to my knowledge.

13 **Q. Never heard that he had any sexual**
14 **relationship with her?**

15 A. No.

16 **Q. Do you know who Mitch Burns is?**

17 A. No. I don't know -- last name?

18 **Q. Burns?**

19 A. No.

20 **Q. Never heard of Mitchell Burns?**

21 A. No.

22 **Q. I am going to ask you some**
23 **questions about it, you can read it if you**
24 **want?**

25 MR. NOVIKOFF: You need him to

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1 Cherry

2 **that you received the morning of the 2nd from**
3 **Elyse Myller; is that right?**

4 A. That is correct.

5 **Q. Is that a handwritten statement or**
6 **was it typed?**7 A. I believe it was a handwritten
8 statement.9 **Q. When these documents were given to**
10 **you were they in some kind of a file, what**
11 **form were they given to you?**

12 A. In a file folder like that.

13 **Q. In a manila folder like this?**

14 A. Yes.

15 MR. GOODSTADT: Would you mark
16 this as Cherry Exhibit 15, handwritten
17 document.18 (Cherry Exhibit 15, handwritten
19 document, marked for identification, as
20 of this date.)21 **Q. Mr. Cherry, do you know why -- do**
22 **you know how Mr. Hesse had possession of a**
23 **statement prior to the time that you got there**
24 **on the 2nd?**

25 A. No.

1 Cherry

2 read it?

3 MR. GOODSTADT: Yes, I have a
4 bunch of questions.5 MR. NOVIKOFF: Why don't you just
6 say if you recognize this document. If
7 you need to read it to recognize it, then
8 read it.

9 A. I recognize it.

10 **Q. What is this document that has**
11 **been marked as Cherry Exhibit 15, it is --**

12 MR. NOVIKOFF: 3169 through 3175.

13 A. You want me to read the whole
14 thing?15 **Q. Just for the record what is it?**16 A. It is a statement addressed to
17 George from Elyse Myller dated November 1,
18 2004.19 **Q. This is the handwritten statement**
20 **that you testified was part of the package of**
21 **information that you received on the 2nd?**

22 A. Yes.

23 **Q. Was this the only --**24 MR. NOVIKOFF: The record reflects
25 that on the first page it says November

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1 Cherry
2 1, 2004. On the last page it appears to
3 be notarized by someone with a November
4 2nd date. So go on.

5 **Q. Other than for the statements from**
6 **the alleged victims of the assault, were there**
7 **any statements in the file when you got there**
8 **other than for Ms. Miller's statement?**

9 A. There was the memo from Jeannie
10 Jaegger --

11 **Q. From Budd Jaegger?**

12 A. From Budd Jaegger, and I believe
13 there was a fax copy of a statement from
14 Jeannie Jaegger.

15 **Q. Why don't you take a couple of**
16 **minutes to read this?**

17 A. Okay.

18 MR. GOODSTADT: Go off the record.

19 THE VIDEOGRAPHER: The time is 4
20 o'clock. We are going off the record.

21 (Recess taken.)

22 THE VIDEOGRAPHER: The time is
23 4:30. We are back on the record.

24 **Q. I don't know if I asked this**
25 **already, but I will ask it again. Do you**

1 Cherry

2 A. No.

3 **Q. Did you ever discuss with George**
4 **the fact that he may have requested Ms. Myller**
5 **to put together a statement and provide it to**
6 **him?**

7 A. No.

8 **Q. Do you know whether Ms. Myller was**
9 **drinking that night?**

10 A. I do not know.

11 **Q. Never asked her?**

12 A. No.

13 **Q. Do you think that is important to**
14 **know whether somebody who is giving a witness**
15 **statement may have been intoxicated at the**
16 **time of the events that they are giving a**
17 **statement about?**

18 MR. NOVIKOFF: Objection.

19 A. It might be important.

20 **Q. What do you mean?**

21 A. It might be important depending on
22 what kind of statement she gave. It seems to
23 be fairly complete. I don't know if she was
24 drinking or not.

25 **Q. So your -- you draw the line as to**

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1 Cherry
2 recognize the document that has been marked as
3 Cherry Exhibit 15?

4 A. Yes, I do.

5 **Q. This was the statement that was**
6 **provided by Elyse Myller that was in the**
7 **package of documents that you received on**
8 **November 2nd; is that correct?**

9 A. Yes.

10 **Q. If you look at the first sentence,**
11 **or the salutation is George, do you know who**
12 **that is referring to?**

13 A. I believe it is George Hesse.

14 **Q. First sentence says: As per your**
15 **request I am writing to recap the events as I**
16 **remember them.**

17 **Do you see that?**

18 A. Yes.

19 **Q. Do you know whether George**
20 **actually requested that Elyse Myller provide a**
21 **statement?**

22 A. Do I know that for a fact, no, I
23 don't know.

24 **Q. So you don't know what she is**
25 **referring to when she says per your request?**

1 Cherry

2 **whether it is important if a person was**
3 **drinking or not as to whether the statement is**
4 **complete?**

5 MR. NOVIKOFF: Objection.

6 A. It would depend on how much she
7 was drinking or whether she was intoxicated
8 or -- a person who has a couple of drinks may
9 be able to give a statement that is adequate
10 for the investigation. I don't know what her
11 situation was that night.

12 **Q. You didn't attempt to find out;**
13 **correct?**

14 A. Correct.

15 **Q. How come?**

16 A. I didn't speak to her originally.

17 **Q. Well, you spoke to her on November**
18 **2nd?**

19 A. Yes.

20 **Q. How come you didn't ask her then,**
21 **were you drinking Ms. Miller?**

22 A. It just didn't come to mind.

23 **Q. It didn't come to mind that**
24 **somebody who was attending a Halloween party**
25 **may have been drinking?**

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1 **Cherry**
 2 MR. NOVIKOFF: Objection.
 3 A. Its a possibility, yes.
 4 **Q. Was it something that you just**
 5 **didn't deem to be relevant or just something**
 6 **that didn't come to mind?**
 7 MR. NOVIKOFF: Objection.
 8 A. It didn't come to mind.
 9 **Q. Sitting here today do you think it**
 10 **is relevant as to whether Ms. Myller was**
 11 **drinking that night?**
 12 MR. NOVIKOFF: Objection.
 13 A. Possibly.
 14 **Q. What do you mean by possibly?**
 15 A. It may be relevant, it may not be
 16 relevant.
 17 **Q. If she was intoxicated would that**
 18 **be relevant?**
 19 MR. NOVIKOFF: Objection.
 20 A. It may be.
 21 **Q. Would that affect the weight that**
 22 **you would put on her statement?**
 23 MR. NOVIKOFF: Objection.
 24 A. Possibly.
 25 **Q. Do you know how this statement was**

1 **Cherry**
 2 **somebody notarized her signature at some point**
 3 **after she signed?**
 4 MR. NOVIKOFF: Objection. I don't
 5 know if that is his testimony.
 6 A. That wasn't my testimony. I said
 7 go to a notary, do what you have to do to be
 8 valid, and notarize it and send it to us. I
 9 don't know what the notary would do to
 10 validate her signature.
 11 **Q. Was the version that you had that**
 12 **didn't have the notary, did it have her**
 13 **signature on it?**
 14 A. Yes.
 15 **Q. Do you know --**
 16 A. To the best of my recollection.
 17 **Q. Do you know what happened to that**
 18 **copy that was not notarized?**
 19 A. I don't know.
 20 RQ MR. GOODSTADT: I would like to
 21 mark the record here, to the extent it
 22 has not been produced, again I represent
 23 I have not seen it, we ask for
 24 production of the original version that
 25 was in the possession of Mr. Hesse and

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Page 325

1 **Cherry**
 2 **delivered to Mr. Hesse?**
 3 A. No.
 4 **Q. Do you know when it was delivered**
 5 **to Mr. Hesse?**
 6 A. No.
 7 **Q. Again your lawyer has already**
 8 **pointed this out, but if you could turn to the**
 9 **last page it appears to be notarized on**
 10 **November 2, 2004, do you see that?**
 11 A. Yes, I do.
 12 **Q. So you don't know if this was**
 13 **provided before or after the date it was**
 14 **notarized?**
 15 A. Yes, I do. I spoke to Elyse
 16 Myller, I believe there is another copy
 17 without the notary stamp on it. I asked her
 18 if she had the original of the statement that
 19 she wrote to George Hesse, and she said she
 20 did. I asked her to have it notarized and
 21 send us the original.
 22 **Q. So the copy that you had in front**
 23 **of you at the time wasn't notarized?**
 24 A. Yes.
 25 **Q. Is it your testimony, sir, that**

1 **Cherry**
 2 Mr. Cherry.
 3 MR. NOVIKOFF: Like I said that
 4 would seem to be a document that if we
 5 have it, the Village has it it should
 6 have been produced, and just remind me
 7 after the deposition by letter and we
 8 will try to ascertain it.
 9 **Q. Prior to November 1, 2004 did you**
 10 **know who Elyse Myller was?**
 11 A. No.
 12 **Q. Never met her before?**
 13 A. Not to my knowledge.
 14 **Q. Have you ever met her**
 15 **face-to-face?**
 16 A. Since then?
 17 **Q. Yes.**
 18 A. Yes.
 19 **Q. So now that you have met her do**
 20 **you have an opinion as to whether you knew her**
 21 **before November 1st, or you knew who she was**
 22 **before November 1st?**
 23 A. I don't believe so.
 24 **Q. When did you meet her**
 25 **face-to-face?**

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Cherry

A. She is a -- she rents out there, she rents a house out there, and I was introduced to her I guess a year -- this is 2005, and I see her out there occasionally and walking around, biking around.

Q. Who were you introduced by?

A. I don't know if it was George who introduced me to her.

Q. So it may have been George Hesse who introduced her?

A. It may have been somebody else, I don't remember who introduced us.

Q. If you look at her statement on page 1, if you look down five lines up from the bottom, it says I believe at this point, you see that?

A. Yes.

Q. It says: I believe at this point others were now waiting behind us and a line was now forming.

Do you see that?

A. Yes.

Q. Do you know who was standing behind them?

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Cherry

A. Yes.

MR. NOVIKOFF: Where are you -- yes, I see it.

Q. At that point the guy in the orange jump suit reached for Jean's throat. He was going to choke her. Do you see that?

A. Yes, sir.

Q. Did you ask Elyse Myller whether the guy in the orange jump suit was going to choke her, or whether he actually choked her?

A. I believe further on in the statement it says that the assault -- I think it is on the page -- the answer is yes, he said he had her by the throat up against the wall. I believe it says it somewhere --

MR. NOVIKOFF: Note my objection to the question.

A. Page 6, the sentence above the last paragraph: Gary no doubtedly prevented an attack on Jean, one that was already in progress and very real.

Q. How do you know that she was referring to the choking when she says one that was already in progress?

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Cherry

A. No.

Q. Did you make any effort to find out who was on that line that Jeannie Jaegger allegedly was choked?

A. No.

Q. How come?

A. I just didn't.

Q. You think that was important, maybe there would be other witnesses who saw the alleged choking?

MR. NOVIKOFF: Objection.

A. It depends on what they saw, I guess possibly.

Q. But you didn't make an effort to find out what they saw; is that correct?

A. No.

Q. Not correct or is correct?

A. That is correct. I wasn't at the scene that night either.

Q. If you look at the page 2, thirteen lines down.

A. Okay.

Q. It says at that point, do you see, the sentence that starts at that point?

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Cherry

MR. NOVIKOFF: Note my objection.

You can answer.

A. Gary no doubtedly prevented an attack on Jean, one that was already in progress and very real.

Q. How do you know that that refers to a choking?

A. This one says going to choke her, reached for Jean's throat and he was going to choke her. I am sure I asked her, I can't recall whether I -- whether I -- if I asked her -- I can't recall asking, but I am sure I said did he attempt to choke her or did he choke her.

MR. NOVIKOFF: I am just going to note for the record that I am not going to read page 2, but I think you read in an incomplete part of the statement, counselor, on page 2, but I am not going to read into it, into the record anything else.

MR. GOODSTADT: I am not sure what you are referring to, but it speaks for itself. The document speaks for itself.

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Page 332

1 Cherry
2 MR. NOVIKOFF: Right, that is why
3 I didn't feel a need to read into it. It
4 does speaks for itself.
5 **Q. What makes you so sure that you**
6 **asked her was he choking her or was he about**
7 **to choke her?**
8 A. Because I think that would be an
9 important fact, whether he has his hand around
10 her neck or not.
11 **Q. Do you assume asking that or do**
12 **you recall asking that?**
13 MR. NOVIKOFF: Objection.
14 A. I don't recall, but that would be
15 a key element to whether it was an assault or
16 an harassment, depending on how much physical
17 injury was sustained by the person who is
18 being choked or grabbed by the throat. I
19 think I would have asked that. I don't recall
20 asking that, but there is no doubt that I
21 would.
22 **Q. Did you take any notes of that**
23 **phone conversation?**
24 A. No, I did not.
25 **Q. Let me understand this. You**

1 Cherry
2 **that were not clear on her statement; correct?**
3 MR. NOVIKOFF: Objection.
4 A. To the best of my recollection,
5 you know, I assume I asked her questions, we
6 were going over it. I just wasn't reading it
7 to her and saying what happened. I was trying
8 to elicit some more information. I don't have
9 any notes, I don't remember what she said, it
10 was four years ago. But I would certainly say
11 did he reach for her, or did he actually have
12 his hands around her neck.
13 **Q. But you don't recall actually**
14 **asking that?**
15 A. No.
16 **Q. You don't recall her telling you**
17 **the answer to that question?**
18 A. No, I don't recall.
19 **Q. Why didn't you take any notes?**
20 A. I didn't think it was necessary.
21 I mean she is available to clarify her own
22 statement if it goes to trial.
23 **Q. That is fair if that is what you**
24 **are going to go with?**
25 A. It is a statement --

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Page 333

1 Cherry
2 **called up the witness to this allege assault,**
3 **how long did you speak to her for?**
4 MR. NOVIKOFF: The assault we are
5 talking about is the assault on that
6 woman?
7 **Q. On the Halloween incident.**
8 MR. NOVIKOFF: Okay.
9 **Q. You spoke to a witness with**
10 **respect to the Halloween incident; is that**
11 **correct?**
12 A. Yes.
13 **Q. You called her; is that correct?**
14 A. Yes.
15 **Q. How long did you speak to her for?**
16 A. I would say ten minutes, fifteen
17 minutes maybe.
18 **Q. Did any of the substance of what**
19 **she told you on that telephone call play any**
20 **role into your investigation?**
21 A. Yes.
22 **Q. You didn't take any notes?**
23 A. No, I was going over the
24 statement.
25 **Q. But you were asking her questions**

1 Cherry
2 MR. NOVIKOFF: There is no
3 question, just a gratuitous comment by
4 counsel trying to elicit a response.
5 **Q. If you look at the bottom of page**
6 **3?**
7 A. Okay.
8 MR. NOVIKOFF: Start by now?
9 **Q. Yes: By now several people were**
10 **involved, though oddly no on duty cops had**
11 **arrived.**
12 **Do you see that?**
13 A. Yes.
14 **Q. It says: Richie was there and had**
15 **his wallet open, he was showing his badge.**
16 **Do you see that?**
17 A. Yes.
18 **Q. Did you try to verify whether**
19 **Richie came over to where the fight was and**
20 **show his badge?**
21 A. With Elyse?
22 **Q. Yes.**
23 A. I don't recall.
24 **Q. Did you try to verify that with**
25 **anybody?**

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1 Cherry
 2 A. I didn't, no.
 3 Q. So you did nothing to verify
 4 whether that was true?
 5 MR. NOVIKOFF: Objection.
 6 A. No, I didn't interview Richie.
 7 Q. I didn't ask you that.
 8 Did you do anything to verify that
 9 that was true?
 10 MR. NOVIKOFF: Objection.
 11 A. I didn't, no.
 12 Q. Now, if you look on page 4, it
 13 says on line -- five lines down, it says:
 14 There were as I said a lot of people involved
 15 by now, and my recollection of the events are
 16 sketchy.
 17 Do you see that?
 18 A. Yes, I do.
 19 Q. That raise any issues with you
 20 that she is saying that her recollection of
 21 the events are sketchy?
 22 A. No. I mean it is part of her
 23 statement. Again if she was going to testify
 24 that would be put up, somebody might ask her
 25 about that, what she meant by sketchy.

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1 Cherry
 2 Q. Did you ask her what she meant by
 3 sketchy?
 4 A. No.
 5 Q. Did the fact that she admitted
 6 that her recollection was sketchy have any
 7 weight in the conclusions that you reached?
 8 MR. NOVIKOFF: Objection.
 9 A. No.
 10 Q. Did you credit her statement in
 11 the conclusions that you reached?
 12 MR. NOVIKOFF: Objection.
 13 Q. Did you credit her statement in
 14 the conclusions that you reached?
 15 A. Did I credit her statement?
 16 Q. Yes.
 17 A. It was part of it, yes.
 18 Q. So you believed that her statement
 19 was credible?
 20 A. Yes.
 21 Q. Now, if you look at paragraph 3 on
 22 page 4?
 23 A. Okay.
 24 Q. You see where it says: By now,
 25 everything was pretty calm, the party/fun was

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1 Cherry
 2 obviously over.
 3 The next sentence says: The on
 4 duty officers were busy talking to people and
 5 collecting information both inside and
 6 outside.
 7 Do you see that?
 8 A. Yes.
 9 Q. Do you know whether that statement
 10 that the officers on duty were busy collecting
 11 information both inside and outside
 12 contradicts any other witness statements in
 13 the case?
 14 A. That is her opinion of what was
 15 going on, I don't know if it contradicts what
 16 other people said. They had their view of the
 17 version of the incident and she had hers. She
 18 doesn't know what they were talking to them
 19 about.
 20 Q. I understand that, but the fact
 21 that she is swearing under oath that the
 22 officers, the on duty officers were busy
 23 talking to people and collecting information
 24 both inside and outside.
 25 A. Okay.

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1 Cherry
 2 MR. NOVIKOFF: Objection.
 3 Q. My question is whether that
 4 contradicted any other witness statements that
 5 you took or read in this matter?
 6 MR. NOVIKOFF: Objection.
 7 Specifically to the characterization of
 8 swearing under oath.
 9 MR. GOODSTADT: Well, it is
 10 notarized, isn't it?
 11 MR. NOVIKOFF: I don't know what
 12 that means. All that means to my
 13 knowledge is that the notary verified
 14 that the person who signed it was the
 15 person whose signature is on the
 16 document. That is my objection.
 17 A. As I said this was her statement.
 18 Other people's statements were their
 19 statements of what they saw and observed.
 20 Some may contradict each other, some may not.
 21 Q. Did you review the statements to
 22 see any contradictions, to determine if there
 23 were any contradictions?
 24 A. Not specifically to look for
 25 contradictions, no.

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Cherry

Q. If you look at the page 5, the middle paragraph it says: Richie went to the police station several times from what I understand.

Do you see that?

A. Yes.

Q. Did you do anything to verify whether Richie Bossetti went to the police stations several times that night?

MR. NOVIKOFF: Objection.

A. I didn't. I didn't personally, no.

Q. Do you know whether anyone did?

A. I don't know.

Q. Do you know where Gary Bossetti stayed that night?

A. According to this statement he stayed at Jean's house, or a house that they had permission to use.

Q. Do you know how he got off the island?

A. How he got off the island?

MR. NOVIKOFF: The question is do you know how he got off the island?

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Cherry

the conversation contradict her written statement?

A. No.

Q. She mention anything about a pool cue being involved?

A. I don't believe so.

Q. Did you ask her?

A. No.

Q. Was there a pool cue involved?

A. No.

Q. Did that seem strange to you --

MR. NOVIKOFF: He wasn't finished with the answer. He was starting to answer. So --

A. I forgot what I was going to say.

Give me the question again.

Q. Did she mention anything about a pool cue being involved. You said no, and I started to say did that seem strange to you, and your counsel wanted you to finish what you were going to say after no.

MR. NOVIKOFF: Were you going to say anything?

A. No.

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Cherry

A. Do I know, no.

Q. Did you ever make any inquiry as to how he got off the island?

A. I didn't, no.

Q. So you testified that you called her on the 2nd; is that correct?

A. Yes.

Q. That conversation lasted between ten and fifteen minutes?

A. Approximately.

Q. Other than what you testified to thus far what did she tell you during that conversation?

MR. NOVIKOFF: Objection.

A. We basically went over the statement, a copy of the statement that we had, and as I said the end of the conversation I asked her to have it notarized and send us the original. That was the extent of the conversation as far as I recall.

Q. And did you follow up with her at any time after that?

A. I didn't, no.

Q. Anything that she told you during

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Cherry

Q. Did it seem strange to you that an eyewitness to an event wrote a seven-page statement, talked to you for fifteen minutes, doesn't mention anything about a pool cue being involved?

MR. NOVIKOFF: Objection.

A. No.

Q. Why not?

A. I took her statement as it was written. This was the initial part of the investigation. You know, there was going to be further investigation, not by me, but by Sergeant Hesse. So I -- we just were trying to get the statements together, who saw what she saw, and put those together to see what happened. I assumed there would be follow up by someone else.

Q. Why did you assume there would be follow up by someone else?

A. Well, these were the initial statements that came in. Now you have to talk to the officers or some of the officers involved and try to elicit what happened.

Q. You didn't ask her -- finish.

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Cherry

A. I didn't ask her about the pool cue.

Q. You didn't think it was --

A. At that point no --

MR. NOVIKOFF: Woe. I know you probably know what counsel is going to ask, but let him ask the question.

Q. You didn't think that it somehow damaged her credibility that she didn't mention anything about a pool cue being involved?

A. At that point, no.

Q. At that point you knew that there was a pool cue allegedly involved; is that correct?

A. Yes.

Q. Do you know what her relationship with the Bossetti's was at that time?

A. No.

Q. Did you ask her?

A. No.

Q. Why not?

MR. NOVIKOFF: Objection. Go ahead.

Cherry

ascertain what biases a potential witness might have?

MR. NOVIKOFF: Objection. Asked and answered.

A. No.

Q. In fact she writes in here that she went to the same house as Gary Bossetti that night; is that correct?

A. That is correct.

Q. That she was in touch with Richard Bossetti; is that correct?

A. Correct.

Q. And that didn't play a role in your determination of whether her statement was credible?

MR. NOVIKOFF: Objection. You can answer.

A. No.

Q. If you look at page 6, the first paragraph counting up from the bottom six lines up from the bottom?

A. Okay.

Q. It says: Before the chief left I told him for 100 percent certainty that there

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Cherry

A. At that point in the initial part of the investigation she was a witness to the attack in the bathroom area. I didn't think to ask her what her relationship was with Gary.

Q. So as part of your investigation you are not looking to see whether alleged eyewitnesses may have a bias?

A. As I said it was the initial part of the investigation putting together witnesses who were there at the scene. If any questions had to be asked further on that would have been done by a person doing the investigation. I was there to get the original, find out what transpired that night.

Q. So let me get this straight. You were not doing the investigation?

A. No.

Q. You were assisting in the investigation?

A. I was assisting in the investigation to ascertain what witnesses saw what.

Q. Right. As part of that you didn't

Cherry

was no gray area about whether or not Gary's actions were justified.

Do you see that?

A. Yes, I do.

Q. Do you know whether she is qualified to make a judgment as to whether somebody's actions in connection with an assault are justified?

MR. NOVIKOFF: Objection.

A. I don't know if she is qualified or not. She saw what she saw.

Q. Did you ask her why she believed the actions were justified 100 percent?

A. No, I didn't ask her that.

Q. And in fact you don't know if she even saw Gary hit somebody with a pool cue; is that correct?

A. That is correct.

Q. Do you know whether as part of the investigation anybody else spoke to Ms. Myller?

A. I don't know.

Q. She indicated in her statement that the chief came to that house; is that

1 Cherry
2 correct, in the morning?
3 A. Yes.
4 Q. Did you ever speak to the chief
5 about what she told him?
6 A. No.
7 Q. How come?
8 A. I didn't have the opportunity to.
9 Q. The chief wasn't around that week?
10 A. He wasn't around and as I said I
11 didn't talk to him at all about this
12 investigation.
13 Q. Do you have the chief's phone
14 number?
15 A. I didn't have it at the time, I
16 probably could have gotten it if I wanted to
17 talk to him, but I wasn't conducting the
18 investigation after this initial statement.
19 Q. You also testified that there was
20 a statement in the file from Budd Jaegger; is
21 that correct?
22 A. Correct, or was a memo to the
23 chief.
24 MR. GOODSTADT: Would you mark
25 this as Cherry Exhibit 16, memo dated

1 Cherry
2 the investigation?
3 A. With Chief Hesse?
4 Q. Yes.
5 A. Budd Jaegger was -- Steven Jaegger
6 was the name on the memo, was the husband of
7 Jeannie Jaegger.
8 Q. Did you know what relationship Mr.
9 Hesse had with Budd Jaegger?
10 A. No.
11 Q. If you look down on the first
12 paragraph, five lines up from the -- four
13 lines up from the first paragraph?
14 A. Four lines up from the bottom?
15 Q. Yes, where it says: Ocean Beach
16 Police Officer Gary Bossetti saw the situation
17 and immediately took action. He subdued this
18 drunken individual.
19 Do you see that?
20 A. Yes, I do.
21 Q. Now, again Budd Jaegger doesn't
22 mention anything about a pool cue either;
23 correct?
24 A. No.
25 MR. NOVIKOFF: Objection.

1 Cherry
2 November 1, 2004.
3 (Cherry Exhibit 16, memo dated
4 November 1, 2004, marked for
5 identification, as of this date.)
6 Q. I placed in front of Mr. Cherry
7 what has now been marked as Cherry Exhibit 16,
8 a one-page document Bates number 3180.
9 Mr. Cherry, have you ever seen the
10 document that is marked as Cherry Exhibit 16?
11 A. Yes.
12 Q. And what is this document?
13 A. It is a memo from Steven Jaegger
14 to Edward Paradiso dated November 1, 2004, and
15 the subject was the Halloween party fight.
16 Q. Is this the memorandum that you
17 testified to that was part of the documents
18 that were given to you on November 2nd?
19 A. Yes.
20 Q. Do you know how this document was
21 forwarded to Chief Paradiso and/or anyone in
22 the Ocean Beach Police Department?
23 A. No, I don't.
24 Q. Did you speak with George Hesse
25 about who Budd Jaegger was at any point during

1 Cherry
2 Q. Do you know whether Budd Jaegger
3 actually saw the incident?
4 A. I don't know.
5 Q. Did you ever speak to Budd
6 Jaegger?
7 A. I didn't, no.
8 Q. Do you know whether anyone did as
9 part of the investigation?
10 A. I believe Chief Hesse did, or
11 Sergeant Hesse at the time.
12 Q. What is that belief based on?
13 A. He got the memo from Ed Paradiso,
14 and I believe he spoke to him. I don't know a
15 hundred percent sure whether he spoke to him
16 or not.
17 Q. My question is what is your belief
18 based on that he spoke to him; not the fact
19 that he got a memo, I want to know what your
20 belief that he spoke to him is based on?
21 A. Just a -- there is no basis for
22 the belief, but I assumed he would have spoken
23 to him.
24 Q. Why would you assume that?
25 A. Because he wrote the original

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<p style="text-align: right;">Page 350</p> <p>1 Cherry</p> <p>2 memo.</p> <p>3 Q. So you assume that because you</p> <p>4 should speak to somebody who provides a</p> <p>5 statement?</p> <p>6 MR. NOVIKOFF: Objection.</p> <p>7 A. I don't know if it is the Chief</p> <p>8 Paradiso spoke to him or George spoke to him,</p> <p>9 I don't know.</p> <p>10 Q. So maybe Chief Paradiso spoke to</p> <p>11 him?</p> <p>12 A. Possibility, yes.</p> <p>13 Q. Did Chief Paradiso have any role</p> <p>14 in this investigation?</p> <p>15 MR. NOVIKOFF: Objection.</p> <p>16 A. A direct role, I don't know. Not</p> <p>17 when I was involved in it.</p> <p>18 Q. Did he have any indirect role</p> <p>19 while you were involved?</p> <p>20 A. No.</p> <p>21 Q. Do you know where Budd Jaegger and</p> <p>22 Jeannie Jaegger went after the incident that</p> <p>23 night?</p> <p>24 MR. NOVIKOFF: Objection.</p> <p>25 Foundation.</p>	<p style="text-align: right;">Page 352</p> <p>1 Cherry</p> <p>2 Q. Do you know whether Budd Jaegger</p> <p>3 was in the bar when the on duty police</p> <p>4 officers arrived?</p> <p>5 A. I don't know whether he was in the</p> <p>6 bar at all that night.</p> <p>7 Q. Do you know whether Jeannie</p> <p>8 Jaegger was at the bar when the on duty police</p> <p>9 officers arrived?</p> <p>10 A. I believe she was in the bar, yes.</p> <p>11 Let me change that. I don't know</p> <p>12 if she was in the bar, I am not quite sure. I</p> <p>13 have to review her statement to see if she was</p> <p>14 in the bar at the time.</p> <p>15 Q. I don't want to get caught up with</p> <p>16 inside the bar or outside the bar, was she</p> <p>17 around the premises?</p> <p>18 A. I don't know.</p> <p>19 Q. Do you know whether she gave a</p> <p>20 statement that night?</p> <p>21 A. Jeannie Jaegger?</p> <p>22 Q. Yes.</p> <p>23 A. Whether she gave a statement; I</p> <p>24 don't know.</p> <p>25 Q. To the police that night?</p>
<p style="text-align: right;">Page 351</p> <p>1 Cherry</p> <p>2 A. No, I don't know.</p> <p>3 Q. Do you know whether they went to</p> <p>4 the police station?</p> <p>5 A. I don't know.</p> <p>6 Q. Do you know whether they gave a</p> <p>7 statement to the officers who were on duty?</p> <p>8 MR. NOVIKOFF: Objection.</p> <p>9 A. I don't know.</p> <p>10 MR. NOVIKOFF: My objection is I</p> <p>11 don't think you established that Budd</p> <p>12 Jaegger was even there. It could help</p> <p>13 you or not. That is the basis of my</p> <p>14 objection.</p> <p>15 MR. GOODSTADT: That is fine. If</p> <p>16 he was not there then you are relying on</p> <p>17 a witness statement of somebody who was</p> <p>18 not there.</p> <p>19 MR. NOVIKOFF: It is what it is.</p> <p>20 MR. GOODSTADT: Right.</p> <p>21 Q. So you don't know one way or the</p> <p>22 other whether Budd Jaegger and Jeannie Jaegger</p> <p>23 went to the police station that night to</p> <p>24 provide a statement?</p> <p>25 A. I don't know.</p>	<p style="text-align: right;">Page 353</p> <p>1 Cherry</p> <p>2 A. I don't think she was in the</p> <p>3 station house that night.</p> <p>4 Q. Do you know whether she went to</p> <p>5 CJ's after the incident?</p> <p>6 A. No, I don't know.</p> <p>7 Q. And to go from Houser's to CJ's do</p> <p>8 you have to pass a police station?</p> <p>9 A. Yes.</p> <p>10 Q. Do you know whether Budd Jaegger</p> <p>11 was drinking that night?</p> <p>12 A. I don't know.</p> <p>13 Q. Did you ask him?</p> <p>14 A. No.</p> <p>15 Q. I think I asked this, but do you</p> <p>16 know what Budd Jaegger's relationship was with</p> <p>17 George Hesse?</p> <p>18 A. No.</p> <p>19 Q. Sitting here today have you ever</p> <p>20 spoken with Budd Jaegger about the Halloween</p> <p>21 incident?</p> <p>22 A. No.</p> <p>23 Q. I believe you also testified that</p> <p>24 you took a statement from Ian Levine; is that</p> <p>25 correct?</p>

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1 Cherry
 2 A. Yes.
 3 **Q. When did you take that statement?**
 4 A. I am not sure of the exact date.
 5 MR. GOODSTADT: Would you mark as
 6 Cherry Exhibit 17, handwritten document.
 7 (Cherry Exhibit 17, handwritten
 8 document, marked for identification, as
 9 of this date.)
 10 **Q. I placed in front of Mr. Cherry**
 11 **what is now marked as Cherry Exhibit 17, a**
 12 **two-page document exhibit bearing Bates number**
 13 **3176 to 3177.**
 14 **Mr. Cherry, do you recognize the**
 15 **document that has been marked as Cherry**
 16 **Exhibit 17?**
 17 A. Yes.
 18 **Q. What is this document?**
 19 A. This is a statement of Ian Levine
 20 taken November 2nd by me.
 21 **Q. Is this your handwriting on this**
 22 **document?**
 23 A. Yes, it is.
 24 **Q. Look at the 2nd page above where**
 25 **it is handwritten Ian Levine, is that**

Page 355

1 Cherry
 2 **Mr. Levine's signature?**
 3 A. Yes.
 4 **Q. You witnessed him sign this?**
 5 A. Yes.
 6 **Q. You signed under it as Police**
 7 **Officer John Cherry; is that correct?**
 8 A. Yes.
 9 **Q. What does the next thing say after**
 10 **your name?**
 11 A. SH, shield, 426.
 12 **Q. And why did you take Mr. Levine's**
 13 **statements as opposed to Hesse?**
 14 A. Chief Hesse asked me to take the
 15 statement.
 16 **Q. So he told you to get the**
 17 **statement of Ian Levine?**
 18 A. Yes.
 19 **Q. Did he give you a list of people**
 20 **to take statements from?**
 21 A. No.
 22 **Q. When did he ask you to take a**
 23 **statement from Mr. Levine?**
 24 A. Mr. Levine came into the station,
 25 and George asked me to take a statement.

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1 Cherry
 2 **Q. Do you know whether George called**
 3 **him before and spoke to him before and asked**
 4 **him to come in?**
 5 A. I don't know.
 6 **Q. Do you know whether anyone asked**
 7 **him to come in to take a statement?**
 8 A. I don't know.
 9 **Q. And this statement is dated**
 10 **November 2nd; is that correct?**
 11 A. Yes.
 12 **Q. So is that the date that you**
 13 **actually took a statement on?**
 14 A. Yes.
 15 **Q. Was this statement taken, does he**
 16 **give you a narrative or did you ask him**
 17 **questions?**
 18 A. I asked him what happened and as
 19 he told me what happened and I wrote it down.
 20 **Q. Did you ask him any other**
 21 **questions other than what happened?**
 22 A. No.
 23 **Q. Do you know whether Ian Levine was**
 24 **drinking that night?**
 25 A. No.

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1 Cherry
 2 **Q. Did you ask him?**
 3 A. No.
 4 **Q. Did you think it important to know**
 5 **whether somebody giving a witness statement**
 6 **like Mr. Levine was drinking that night?**
 7 MR. NOVIKOFF: Objection.
 8 A. It may or may not be, but I didn't
 9 ask him if he was drinking.
 10 **Q. When you say may or may not, that**
 11 **is based on the same answer that you gave**
 12 **before?**
 13 A. Yes.
 14 **Q. We don't need to go through it**
 15 **again.**
 16 A. Okay.
 17 **Q. Who else was there while you were**
 18 **taking the statement from Mr. Levine?**
 19 A. The chief was there I believe. He
 20 was -- he was not in the room -- he didn't
 21 witness the statement, so he wasn't actually
 22 there when I took the statement. He was
 23 somewhere in the station house.
 24 **Q. Chief Paradiso?**
 25 A. I'm sorry, Sergeant Hesse.

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1 Cherry
 2 **Q. So Hesse was a sergeant at the**
 3 **time?**
 4 A. Yes.
 5 **Q. So after Hesse and Paradiso had**
 6 **their private discussion?**
 7 A. Right.
 8 **Q. Paradiso left; is that correct?**
 9 A. Yes.
 10 **Q. Did he return at all that day**
 11 **while you were there?**
 12 A. No. I believe not, no.
 13 **Q. Did you have any communication**
 14 **with him that day after he left?**
 15 A. No.
 16 **Q. Ian Levine, he is the gentleman**
 17 **who called the police that night; is that**
 18 **correct?**
 19 A. Yes, I believe so.
 20 **Q. Did you know Ian Levine prior to**
 21 **taking the statement?**
 22 A. I knew who he was, he is a local
 23 merchant in town.
 24 **Q. Is he a resident of Ocean Beach?**
 25 A. I believe so, yes.

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1 Cherry
 2 **Q. When you say a merchant, does he**
 3 **own a business in Ocean Beach?**
 4 A. I believe him and his father own a
 5 business in town.
 6 **Q. What business is that?**
 7 A. They have a landscaping business
 8 and they run a hotel I believe.
 9 **Q. What is the name of the**
 10 **landscaping business?**
 11 A. I don't know.
 12 **Q. What was it at the time?**
 13 A. I don't know what it was named at
 14 the time.
 15 **Q. What was the name of the hotel**
 16 **that they ran at the time?**
 17 A. I believe it is Season's Hotel.
 18 **Q. Is it still open, Season's?**
 19 A. Yes.
 20 **Q. Do they still run it?**
 21 A. Yes.
 22 **Q. Do you know what Mr. Levine's**
 23 **relationship was with Mr. Hesse?**
 24 A. No.
 25 **Q. Do you know what it was with Gary**

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1 Cherry
 2 **Bossetti?**
 3 A. No.
 4 **Q. Do you know what it was with**
 5 **Richard Bossetti?**
 6 A. No.
 7 **Q. Do you know what Budd Jaegger's**
 8 **relationship was with Gary Bossetti?**
 9 A. No.
 10 **Q. Do you know what Budd Jaegger's**
 11 **relationship was with Richard Bossetti?**
 12 A. No.
 13 **Q. How long was Mr. Levine giving you**
 14 **the statement for?**
 15 A. I guesses he was in there maybe 45
 16 minutes to an hour maybe, or half hour or 45
 17 minutes, somewhere along that line.
 18 **Q. Did you discuss anything else with**
 19 **him other than the statement?**
 20 A. No.
 21 **Q. Did you discuss -- did he tell you**
 22 **anything about Ocean Beach -- strike that.**
 23 **Did he tell you anything to you**
 24 **about the Halloween incident other than what**
 25 **is reflected in your statement?**

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1 Cherry
 2 A. No.
 3 **Q. It took you 45 minutes to do a**
 4 **page and a half statement?**
 5 MR. NOVIKOFF: Objection.
 6 A. Half hour to 45 minutes talking to
 7 him, what happened, writing it down. Then
 8 what happened, write it down. Continue on the
 9 narrative. As he told me what happened I
 10 wrote it down.
 11 **Q. And other than for asking what**
 12 **happened a number of times were there any**
 13 **other questions that you asked him about the**
 14 **Halloween incident?**
 15 MR. NOVIKOFF: Objection.
 16 A. No.
 17 **Q. I will note again and I will**
 18 **represent for the record that Mr. Levine**
 19 **doesn't mention anything about a pool cue in**
 20 **here; is that correct?**
 21 A. I didn't read the statement --
 22 MR. NOVIKOFF: The document speaks
 23 for itself. You can answer the question.
 24 A. Yes.
 25 **Q. Do you recall him mentioning**

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1 Cherry
2 anything about a pool cue to you?
3 A. No.
4 Q. Do you recall whether he told you
5 that he actually saw the incident, the fight
6 being the incident?
7 A. Again I would have to read what he
8 said in the statement. He said he noticed
9 some people fighting in the back and
10 recognized Gary Bossetti. As I said this is
11 his statement, it speaks to what he told me.
12 Q. The fight was in the northeast
13 corner of the bar, do you see that, it is on
14 the sixth line down?
15 A. The second paragraph.
16 Q. Of the second paragraph, yes?
17 A. I see that.
18 Q. He says he was sitting at the bar,
19 do you see that?
20 A. Yes.
21 Q. How far is the bar to the
22 northeast corner of Houser's?
23 A. I don't know.
24 Q. Have you ever been in Houser's?
25 A. Just one time.

1 Cherry
2 about it. Tell me what you saw and tell me
3 what happened.
4 Q. Did Mr. Levine give a statement to
5 the police that night?
6 A. I don't know.
7 Q. Do you know whether he was at the
8 bar when the on duty police officers showed
9 up?
10 A. I don't know if he mentioned it in
11 the statement or not.
12 MR. NOVIKOFF: Does he personally
13 know --
14 Q. Whether you know by something that
15 you were told by Mr. Levine or somebody --
16 fair enough.
17 A. What was the question again?
18 Q. Whether you know whether Mr.
19 Levine was at the bar or on the bar's premise
20 at the time when the on duty police officers
21 showed up?
22 A. Do I know personally, no. But he
23 says he was in the statement.
24 Q. Did you ask him why he didn't give
25 a statement at that point in time?

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Page 365

1 Cherry
2 Q. When was that?
3 A. On November 2nd.
4 Q. As part of the investigation?
5 A. Yes.
6 Q. You didn't check -- strike that.
7 Was that before or after you took
8 the statement from Mr. Levine?
9 A. Before.
10 Q. So you didn't -- strike that.
11 Based on your visit there was it
12 your position that somebody could see the
13 northeast corner of the bar when they are
14 sitting at the bar?
15 MR. NOVIKOFF: Objection.
16 A. I don't know.
17 Q. Did you ask him about whether he
18 saw a pool cue being used that night?
19 A. No.
20 Q. Did you think it was strange that
21 he didn't mention anything about a pool cue?
22 MR. NOVIKOFF: Objection.
23 A. It is his statement, I am not
24 going to put words in the man's mouth. If he
25 didn't mention it I was not going to ask him

1 Cherry
2 A. No.
3 Q. Did you think it was strange that
4 he didn't give a statement to the on duty
5 officers when they showed up?
6 MR. NOVIKOFF: Objection.
7 A. If I was one of the officers
8 responding and he was a person originally
9 called I would have sought him out to find out
10 what happened. I don't know what transpired
11 at the bar that night, I wasn't there. So I
12 don't know why he didn't give a statement to
13 the officers who responded.
14 Q. So you don't know one way or the
15 other whether the officers who responded tried
16 to get a statement from Mr. Levine?
17 A. I don't know.
18 Q. Do you know what Mr. Levine's
19 relationship was with Elyse Myller?
20 A. No.
21 Q. But he mentions that he spoke to
22 Elyse Myller and got the information about
23 what happened to Jeannie Jaegger from her; is
24 that correct?
25 MR. NOVIKOFF: Objection. The

A3417

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1 Cherry
2 document speaks for itself. You can
3 answer.
4 A. I didn't read that part. Can you
5 tell me what page.
6 **Q. Second page, and it is the second**
7 **paragraph down: I later spoke to Elyse Myller**
8 **who told me that Jeannie Jaegger was attacked**
9 **by the man who Gary was trying to take out of**
10 **the bar.**
11 A. Okay. Yes.
12 **Q. Did you ask him what his**
13 **relationship was with Elyse Myller?**
14 A. No.
15 **Q. Did you ask him why he didn't go**
16 **to the police station that night?**
17 A. No.
18 **Q. Did you credit his statement as**
19 **part of your investigation?**
20 MR. NOVIKOFF: Objection.
21 A. Yes.
22 **Q. Do you know whether he saw Elyse**
23 **Myller's statement prior to giving you his**
24 **statement?**
25 A. Not to my knowledge.

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1 Cherry
2 **Q. So you don't know one way or the**
3 **other?**
4 A. No.
5 MR. GOODSTADT: I think we can
6 break now.
7 MR. NOVIKOFF: Great.
8 MR. GOODSTADT: The deposition is
9 not closed subject to the time remaining,
10 and we will find a convenient date to
11 bring Mr. Cherry back to complete the
12 deposition.
13 THE VIDEOGRAPHER: The time is
14 5:13. We are going off the record.
15 (Time noted: 5:13 a.m.)

16
17 PATRICK JOHN CHERRY

18
19 Subscribed and sworn to before me
20 this ____ day of _____, 2008
21
22
23
24
25

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1
2 **C E R T I F I C A T E**
3 **STATE OF NEW YORK)**
4 **: ss.**
5 **COUNTY OF NEW YORK)**
6
7 I, Philip Rizzuti, a Notary Public
8 within and for the State of New York, do
9 hereby certify:
10 That PATRICK JOHN CHERRY, the
11 witness whose deposition is hereinbefore set
12 forth, was duly sworn by me and that such
13 deposition is a true record of the testimony
14 given by the witness.
15 I further certify that I am not
16 related to any of the parties to this action
17 by blood or marriage, and that I am in no way
18 interested in the outcome of this matter.
19 IN WITNESS WHEREOF, I have
20 hereunto set my hand this 2nd day of
21 December, 2008.

22
23 PHILIP RIZZUTI
24
25

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1
 2 *** ERRATA SHEET ***
 3 NAME OF CASE: CARTER VS. OCEAN BEACH
 DATE OF DEPOSITION: November 18, 2008
 4 NAME OF WITNESS: PATRICK JOHN CHERRY
 PAGE LINE FROM TO

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 20
 21 PATRICK JOHN CHERRY
 22 Subscribed and sworn to before me
 23 this ____ day of _____, 2008.
 24 _____
 25 (Notary Public) My Commission Expires:

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

EDWARD CARTER, FRANK FIORILLO,)
KEVIN LAMM, JOSEPH NOFI, and)
THOMAS SNYDER,)
)
Plaintiffs,)
)
vs.) CV 07 1215
)
INCORPORATED VILLAGE OF OCEAN)
BEACH; MAYOR JOSEPH C. LOEFFLER)
JR., individually and in his)
Official capacity; former mayor)
NATALIE K. ROGERS, individually)
and in her official capacity,)
OCEAN BEACH POLICE DEPARTMENT;)
ACTING DEPUTY POLICE CHIEF)
GEORGE B. HESSE, individually)
and in his official capacity;)
SUFFOLK COUNTY; SUFFOLK COUNTY)
POLICE DEPARTMENT, SUFFOLK)
COUNTY DEPARTMENT OF CIVIL)
SERVICE; and ALLISON SANCHEZ,)
Individually and in her)
Official capacity,)
)
Defendants.)
-----)

CONTINUED VIDEOTAPED DEPOSITION OF

PATRICK CHERRY

New York, New York

Friday, February 6, 2009

Reported by:
Philip Rizzuti
JOB NO. 20816B

<p style="text-align: right;">Page 373</p> <p>1</p> <p>2</p> <p>3</p> <p>4 February 6, 2009</p> <p>5 11:32 a.m.</p> <p>6</p> <p>7 Continued videotaped deposition of</p> <p>8 PATRICK CHERRY, held at the offices</p> <p>9 of Thompson Wigdor & Gilly, 85 Fifth</p> <p>10 Avenue, New York, New York, pursuant to</p> <p>11 subpoena, before Philip Rizzuti, a</p> <p>12 Notary Public of the State of New York</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 375</p> <p>1</p> <p>2 APPEARANCES:</p> <p>3</p> <p>4 BEE READY FISHBEIN HATTER & DONOVAN, LLP</p> <p>5 Attorneys for Village of Ocean Beach</p> <p>6 170 Old Country Road</p> <p>7 Mineola, New York 11501</p> <p>8 BY: KENNETH A. GRAY, ESQ.</p> <p>9</p> <p>10 ALSO PRESENT:</p> <p>11 MICHAEL PINEIRO, Videographer</p> <p>12 KEVIN LAMM</p> <p>13 FRANK FIORILLO</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p style="text-align: right;">Page 374</p> <p>1</p> <p>2 APPEARANCES:</p> <p>3</p> <p>4 THOMPSON WIGDOR & GILLY, LLP</p> <p>5 Attorneys for Plaintiffs</p> <p>6 85 Fifth Avenue</p> <p>7 New York, New York 10003</p> <p>8 BY: ANDREW S. GOODSTADT, ESQ..</p> <p>9</p> <p>10</p> <p>11 MARKS, O'NEILL, O'BRIEN & COURTNEY, P.C.</p> <p>12 Attorneys for George B. Hesse</p> <p>13 530 Saw Mill Road</p> <p>14 Elmsford, New York 10523</p> <p>15 BY: KEVIN W. CONNOLLY, ESQ.</p> <p>16</p> <p>17 RIVKIN RADLER, LLP</p> <p>18 Attorneys for Incorporated Village of</p> <p>19 Ocean Beach, Joseph Loeffler, Natalie</p> <p>20 Rogers and Ocean Beach Police Department</p> <p>21 926 RexCorp Plaza</p> <p>22 Uniondale, New York 11556-0926</p> <p>23 BY: MICHAEL P. WELCH, ESQ.</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 376</p> <p>1</p> <p>2 IT IS HEREBY STIPULATED AND AGREED,</p> <p>3 by and between counsel for the respective</p> <p>4 parties hereto, that the filing, sealing and</p> <p>5 certification of the within deposition shall</p> <p>6 be and the same are hereby waived;</p> <p>7 IT IS FURTHER STIPULATED AND AGREED</p> <p>8 that all objections, except as to the form</p> <p>9 of the question, shall be reserved to the</p> <p>10 time of the trial;</p> <p>11 IT IS FURTHER STIPULATED AND AGREED</p> <p>12 that the within deposition may be signed</p> <p>13 before any Notary Public with the same force</p> <p>14 and effect as if signed and sworn to before</p> <p>15 the Court.</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

<p style="text-align: right;">Page 377</p> <p>1 Cherry</p> <p>2 THE VIDEOGRAPHER: This is the</p> <p>3 start of the tape labeled number 1 of</p> <p>4 the continuing videotape deposition of</p> <p>5 Patrick Cherry in the matter of Carter 11:32:43</p> <p>6 versus Incorporated Village of Ocean</p> <p>7 Beach. This deposition is being held at</p> <p>8 85 Fifth Avenue, New York, New York on</p> <p>9 February 6, 2009 at approximately 11:35</p> <p>10 a.m. 11:33:00</p> <p>11 My name is Michael Pineiro from</p> <p>12 TSG Reporting Inc., and I am the legal</p> <p>13 video specialist. The court reporter is</p> <p>14 Phil Rizzuti in association with TSG</p> <p>15 Reporting. Will counsel please 11:33:10</p> <p>16 introduce yourselves.</p> <p>17 MR. GOODSTADT: Andrew Goodstadt,</p> <p>18 Thompson Wigdor & Gilly on behalf of the</p> <p>19 plaintiffs.</p> <p>20 MR. WELCH: For the Incorporated 11:33:15</p> <p>21 Village of Ocean Beach, Mayor Loeffler,</p> <p>22 former Mayor Rogers and the Ocean Beach</p> <p>23 Police Department, Rivkin Radler, 926</p> <p>24 RexCorp Plaza, Uniondale, New York, by</p> <p>25 Michael Welch. 11:33:26</p>	<p style="text-align: right;">Page 379</p> <p>1 Cherry</p> <p>2 Q. The most important one is that if</p> <p>3 you don't understand or hear a question that I</p> <p>4 ask just let me know and I will be happy to</p> <p>5 repeat or rephrase it. To the extent that you 11:34:16</p> <p>6 answer the question I will assume that you</p> <p>7 both heard my question and understood the</p> <p>8 whole thing, okay?</p> <p>9 A. Yes, sir.</p> <p>10 Q. Have you done anything to prepare 11:34:25</p> <p>11 for today's deposition between November 18,</p> <p>12 2008, which was your first day of deposition</p> <p>13 and today?</p> <p>14 A. No.</p> <p>15 Q. Have you reviewed a copy of the 11:34:33</p> <p>16 transcript from your November 18th deposition?</p> <p>17 A. No, sir.</p> <p>18 Q. Have you reviewed any excerpts of</p> <p>19 that transcript?</p> <p>20 A. No, sir. 11:34:44</p> <p>21 Q. Have you spoken with any current</p> <p>22 or former employees of Ocean Beach or the</p> <p>23 Ocean Beach Police Department about this case</p> <p>24 since November 18, 2008?</p> <p>25 A. No, sir. 11:34:55</p>
<p style="text-align: right;">Page 378</p> <p>1 Cherry</p> <p>2 MR. CONNOLLY: Kevin W. Connolly,</p> <p>3 Marks, O'Neill, O'Brien & Courtney, for</p> <p>4 defendant George B. Hesse.</p> <p>5 MR. GRAY: Kenneth Gray from the 11:33:34</p> <p>6 law firm of Bee Ready Fishbein Hatter &</p> <p>7 Donovan, 170 Old Country Road, Mineola,</p> <p>8 New York, village attorney for the</p> <p>9 Village of Ocean Beach.</p> <p>10 PATRICK CHERRY, called as a 11:33:48</p> <p>11 witness, having been previously duly</p> <p>12 sworn by a Notary Public, was examined</p> <p>13 and testified as follows:</p> <p>14 EXAMINATION BY</p> <p>15 MR. GOODSTADT: 11:33:51</p> <p>16 MR. WELCH: Usual stip?</p> <p>17 MR. GOODSTADT: Usual stip.</p> <p>18 Q. Good morning, Mr. Cherry.</p> <p>19 A. Good morning.</p> <p>20 Q. Thank you for coming back. Before 11:33:57</p> <p>21 we get started I just wanted to agree on the</p> <p>22 same ground rules as last time apply. Do you</p> <p>23 recall what those were?</p> <p>24 A. Do you want to go over them</p> <p>25 briefly? 11:34:08</p>	<p style="text-align: right;">Page 380</p> <p>1 Cherry</p> <p>2 Q. Have you spoken with George Hesse</p> <p>3 at all since November 18, 2008 and today?</p> <p>4 A. Yes, sir.</p> <p>5 Q. How many times have you spoken 11:35:02</p> <p>6 with him?</p> <p>7 A. Approximately eight times.</p> <p>8 Q. Eight times. Have you discussed</p> <p>9 anything to do with this case with him during</p> <p>10 those eight discussions? 11:35:14</p> <p>11 A. No, sir.</p> <p>12 Q. When was the most recent time that</p> <p>13 you spoke with him?</p> <p>14 A. This morning when I signed on duty</p> <p>15 with the village. 11:35:24</p> <p>16 Q. And you are working today?</p> <p>17 A. Yes, sir.</p> <p>18 Q. And you are being paid by the</p> <p>19 Village of Ocean Beach for your time today?</p> <p>20 A. Yes, sir. 11:35:33</p> <p>21 Q. Did you discuss where you were</p> <p>22 going today with Mr. Hesse?</p> <p>23 A. I told him that I was going to</p> <p>24 finish my deposition.</p> <p>25 Q. With respect to this case? 11:35:43</p>

<p style="text-align: right;">Page 381</p> <p>1 Cherry</p> <p>2 A. Yes.</p> <p>3 Q. Did he say anything in response?</p> <p>4 A. No, sir.</p> <p>5 Q. Did you discuss any of the 11:35:46</p> <p>6 plaintiffs in this case with him?</p> <p>7 A. No, sir.</p> <p>8 Q. Since November 18, 2008 until</p> <p>9 today have you discussed anything at all about</p> <p>10 the plaintiffs in this case with the George 11:35:57</p> <p>11 Hesse?</p> <p>12 A. No.</p> <p>13 Q. Have you discussed anything at all</p> <p>14 about this lawsuit with George Hesse between</p> <p>15 November 18, 2008 and today? 11:36:04</p> <p>16 A. Other than coming today, I had to</p> <p>17 go back, there was no other discussions.</p> <p>18 Q. Did you speak to him about your</p> <p>19 first day of deposition at all?</p> <p>20 A. Other than I went to the 11:36:14</p> <p>21 deposition, that is about it.</p> <p>22 Q. You didn't tell him how it went or</p> <p>23 what any of the questions were?</p> <p>24 A. No, sir.</p> <p>25 Q. Nothing about the substance of the 11:36:20</p>	<p style="text-align: right;">Page 383</p> <p>1 Cherry</p> <p>2 Q. Why did you tell -- strike that.</p> <p>3 What position does she have at</p> <p>4 Ocean Beach?</p> <p>5 A. She works for Klein's, it is a 11:37:22</p> <p>6 general store over in Ocean Beach.</p> <p>7 Q. So she is not employed by Ocean</p> <p>8 Beach, she is employed by a private business</p> <p>9 at Ocean Beach?</p> <p>10 A. That is correct. 11:37:31</p> <p>11 Q. How long has she had that job?</p> <p>12 A. I guess since -- I would say over</p> <p>13 ten years.</p> <p>14 Q. And why did you tell Mr. Hesse</p> <p>15 that you were coming here today? 11:37:44</p> <p>16 A. He was.</p> <p>17 MR. WELCH: Objection. You can</p> <p>18 answer.</p> <p>19 A. I was -- I called him to sign on</p> <p>20 duty. He answered the phone. 11:37:53</p> <p>21 Q. Do you report to him?</p> <p>22 A. I don't understand in what way,</p> <p>23 sir.</p> <p>24 Q. Is he your supervisor?</p> <p>25 A. Well, I do report to him, he is a 11:38:04</p>
<p style="text-align: right;">Page 382</p> <p>1 Cherry</p> <p>2 deposition?</p> <p>3 A. No, sir.</p> <p>4 Q. I believe the last time you</p> <p>5 testified that you have two daughters; is that 11:36:25</p> <p>6 correct?</p> <p>7 A. That is correct.</p> <p>8 Q. One's name is Deirdre?</p> <p>9 A. Correct.</p> <p>10 Q. The other one? 11:36:31</p> <p>11 A. Nora.</p> <p>12 Q. Is Deirdre friends with Mr. Hesse?</p> <p>13 A. She knows Mr. Hesse, but other</p> <p>14 than say hello, I don't think I would consider</p> <p>15 them friends. They know each other. 11:36:50</p> <p>16 Q. What do you mean by saying hello,</p> <p>17 have they seen each other over the last two</p> <p>18 years?</p> <p>19 A. My daughter works over at Ocean</p> <p>20 Beach and she will stop into the station to 11:37:03</p> <p>21 tell me she is there, and if George is there</p> <p>22 she will say hello to him, or if he stops by</p> <p>23 the house she will say hello to him. But</p> <p>24 other than that there is no other</p> <p>25 relationship. 11:37:16</p>	<p style="text-align: right;">Page 384</p> <p>1 Cherry</p> <p>2 supervisor. But today whoever answered the</p> <p>3 phone I would have signed on duty with. He</p> <p>4 just happened to answer the question.</p> <p>5 Q. Is he still actively working at 11:38:17</p> <p>6 Ocean Beach?</p> <p>7 A. I believe so, yes.</p> <p>8 Q. Do you know what his position is?</p> <p>9 A. He is a supervisor. I don't know</p> <p>10 exactly what his current position is, or his 11:38:24</p> <p>11 current title is I should say.</p> <p>12 Q. You don't know what his current</p> <p>13 title is?</p> <p>14 A. No.</p> <p>15 Q. What do you refer to him as 11:38:30</p> <p>16 currently?</p> <p>17 A. Chief. I still call him chief.</p> <p>18 Q. You still call him chief?</p> <p>19 A. Yes, sir.</p> <p>20 Q. Do other people in the department 11:38:35</p> <p>21 call him chief?</p> <p>22 A. I wouldn't know.</p> <p>23 Q. I believe the last time you</p> <p>24 testified that you were an on call dispatcher</p> <p>25 currently; is that correct? 11:38:43</p>

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<p>1 Cherry</p> <p>2 A. That is correct.</p> <p>3 Q. Is that an actual civil service</p> <p>4 title?</p> <p>5 MR. WELCH: Objection. Asked and 11:38:46</p> <p>6 answered in the previous definition. You</p> <p>7 can answer again.</p> <p>8 A. I believe so, yes.</p> <p>9 Q. Did you have to take a test for</p> <p>10 that title? 11:38:52</p> <p>11 A. No.</p> <p>12 Q. Did you have to apply to receive</p> <p>13 that position?</p> <p>14 MR. WELCH: Objection. Asked and</p> <p>15 answered. You can answer. 11:38:58</p> <p>16 A. I applied for a job as dispatcher</p> <p>17 with the village and was hired. There was no</p> <p>18 -- I filled out -- I don't know if I filled</p> <p>19 out another application or not. But yes, I</p> <p>20 resigned as a police officer and applied as a 11:39:10</p> <p>21 dispatcher when they asked me to.</p> <p>22 Q. But no further applications or</p> <p>23 paperwork with respect to becoming an on call</p> <p>24 dispatcher?</p> <p>25 A. No, sir. 11:39:20</p>	<p>1 Cherry</p> <p>2 this document as Cherry Exhibit 18,</p> <p>3 document numbered 003165 through 3166.</p> <p>4 (Cherry Exhibit 18, document</p> <p>5 numbered 003165 through 3166, marked for 11:40:23</p> <p>6 identification, as of this date.)</p> <p>7 Q. I place in front of Mr. Cherry</p> <p>8 what has been marked as Cherry Exhibit 18, two</p> <p>9 page exhibit bearing Bates numbers 3165 to</p> <p>10 3166. 11:40:57</p> <p>11 Have you ever seen the document</p> <p>12 marked as Cherry Exhibit 18?</p> <p>13 A. I have seen this document, yes.</p> <p>14 Q. What is the document?</p> <p>15 A. It is a statement of Douglas 11:41:02</p> <p>16 Wycoff.</p> <p>17 Q. Who took this statement?</p> <p>18 MR. WELCH: Objection.</p> <p>19 A. George Hesse did.</p> <p>20 Q. Were you present in the station on 11:41:12</p> <p>21 November 2, 2004?</p> <p>22 A. I am not sure.</p> <p>23 Q. Were you present at this</p> <p>24 investigation -- strike that.</p> <p>25 Were you present at the site in 11:41:26</p>
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<p>1 Cherry</p> <p>2 Q. Now, the last time we finished off</p> <p>3 we were in the middle of discussing your role</p> <p>4 in the investigation into the Halloween</p> <p>5 incident, do you recall that, sir? 11:39:30</p> <p>6 A. Yes, I do.</p> <p>7 Q. Do you know who Mr. Douglas Wycoff</p> <p>8 it?</p> <p>9 A. Yes.</p> <p>10 Q. Who is Douglas Wycoff? 11:39:36</p> <p>11 A. He is a resident of Ocean Beach.</p> <p>12 I believe he is a teacher over there at the</p> <p>13 school, and I know him from the village.</p> <p>14 Q. Are you friends with him?</p> <p>15 A. I wouldn't say friends. I know 11:39:51</p> <p>16 him to say hello.</p> <p>17 Q. Does he live on the beach; is he a</p> <p>18 permanent resident of the beach?</p> <p>19 A. I believe so, yes.</p> <p>20 Q. Do you know where, what address he 11:40:05</p> <p>21 lives at?</p> <p>22 A. No.</p> <p>23 Q. Have you ever been to his house?</p> <p>24 A. No.</p> <p>25 MR. GOODSTADT: Would you mark 11:40:12</p>	<p>1 Cherry</p> <p>2 which Mr. Hesse took Mr. Wycoff's statement?</p> <p>3 MR. WELCH: Objection.</p> <p>4 A. I don't believe so, no.</p> <p>5 Q. Have you ever spoken with Douglas 11:41:37</p> <p>6 Wycoff about the incident on Halloween 2004 in</p> <p>7 Ocean Beach?</p> <p>8 A. No.</p> <p>9 Q. Did you ever speak with anyone</p> <p>10 about the statement that has been marked as 11:41:50</p> <p>11 Cherry Exhibit 18?</p> <p>12 A. Could you repeat that?</p> <p>13 Q. Have you ever spoken to anybody</p> <p>14 about the statement that has been marked as</p> <p>15 Cherry Exhibit 18? 11:42:00</p> <p>16 A. No.</p> <p>17 Q. When was the first time that you</p> <p>18 reviewed this document?</p> <p>19 A. I don't know the first time, I</p> <p>20 don't remember the first time that I looked at 11:42:08</p> <p>21 it.</p> <p>22 Q. Did you review it in your role as</p> <p>23 part of the investigation into the Halloween</p> <p>24 incident?</p> <p>25 A. Sometime after that, after the -- 11:42:14</p>

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1 Cherry
 2 it was not -- it was probably when I got
 3 back -- I don't know the exact time. I did
 4 read it sometime afterwards.
 5 **Q. How long afterwards?** 11:42:26
 6 A. Probably when I got back for the
 7 next season.
 8 **Q. So you don't think you reviewed**
 9 **the statement until the '05 season?**
 10 A. That is correct. 11:42:34
 11 **Q. Do you know whether this statement**
 12 **played any role in any conclusions that were**
 13 **reached as part of that investigation?**
 14 MR. WELCH: Objection. You can
 15 answer. 11:42:47
 16 A. I don't know.
 17 **Q. Did you ever speak to George Hesse**
 18 **about this statement?**
 19 A. No.
 20 **Q. How did you come about getting a** 11:42:52
 21 **copy of this?**
 22 A. There was a file.
 23 **Q. What do you mean there was a file?**
 24 A. There was a case file on this
 25 incident. A file where they kept all the 11:43:02

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1 Cherry
 2 paperwork.
 3 **Q. How did you receive a copy of the**
 4 **file when you came back in the '05 season?**
 5 A. I didn't receive a copy of it, I 11:43:11
 6 looked at the file.
 7 **Q. Where was the file kept?**
 8 A. In the office.
 9 **Q. Whose office?**
 10 A. The village, the Police Department 11:43:19
 11 office.
 12 **Q. So nobody handed it to you, you**
 13 **just went into the file cabinet and looked at**
 14 **the file?**
 15 A. No. I asked to read the -- look 11:43:29
 16 at the file.
 17 **Q. Who did you ask?**
 18 A. Sergeant Hesse.
 19 **Q. And he was the sergeant at the**
 20 **time?** 11:43:38
 21 A. Yes.
 22 **Q. Did you have any reaction when you**
 23 **read this statement from Douglas Wycoff?**
 24 MR. WELCH: Objection. You can
 25 answer. 11:43:47

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1 Cherry
 2 A. No.
 3 **Q. Do you know whether the**
 4 **investigation was concluded as of the**
 5 **beginning of the '05 season?** 11:43:53
 6 A. The investigation was concluded,
 7 yes.
 8 **Q. Do you know if any conclusions**
 9 **were reached?**
 10 A. As far as -- 11:44:00
 11 **Q. Well, were there any conclusions**
 12 **reached as a result of the investigation?**
 13 A. Yes.
 14 **Q. What were the conclusions that**
 15 **were reached?** 11:44:09
 16 A. That Gary Bossetti apparently had
 17 acted as his role as a police officer. Gary
 18 Bossetti had acted properly as his role as a
 19 police officer. Observed a female getting
 20 attacked by someone, went in and intervened 11:44:32
 21 and stopped the attack, and then was
 22 assaulted by the -- I believe Mr. Van Koot and
 23 two friends of his, and that he acted in
 24 defending himself properly.
 25 **Q. Who reached that conclusion?** 11:44:54

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1 Cherry
 2 A. That was the conclusion that
 3 apparently -- I reached that conclusion myself
 4 on the investigation, and George and I believe
 5 Chief Paradiso reached that conclusion also. 11:45:04
 6 **Q. When did you reach that**
 7 **conclusion?**
 8 A. After the investigation was
 9 finished.
 10 **Q. When was that?** 11:45:09
 11 A. Not finished, but after we took
 12 the statements from the witnesses.
 13 **Q. When was that?**
 14 A. Well, after I completed my
 15 statements it sort of put the picture together 11:45:22
 16 and I guess -- I don't know exactly when the
 17 chief and the sergeant drew the same
 18 conclusion, it was sometime shortly
 19 thereafter.
 20 **Q. When did you reach the conclusion** 11:45:33
 21 **of your role in the investigation?**
 22 A. After I finished taking the
 23 statements and read them that was my opinion.
 24 **Q. When was that?**
 25 A. Shortly after I took the 11:45:40

6 (Pages 389 to 392)

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<p>1 Cherry</p> <p>2 statements sometime in the beginning of</p> <p>3 November.</p> <p>4 Q. So you reached the conclusion</p> <p>5 before you saw Mr. Wycoff's statement; is that 11:45:47</p> <p>6 correct?</p> <p>7 A. Probably yes.</p> <p>8 Q. Had you spoken to either Gary or</p> <p>9 Richard Bossetti about the incident at the</p> <p>10 time that you reached your conclusion? 11:45:56</p> <p>11 A. No.</p> <p>12 Q. Had you spoken to Mr. Van Koot</p> <p>13 prior to reaching the conclusion?</p> <p>14 MR. WELCH: Objection.</p> <p>15 A. No. 11:46:03</p> <p>16 Q. Had you spoken to Mr. Shallek</p> <p>17 prior to reaching the conclusion that</p> <p>18 Mr. Bossetti, Gary Bossetti had acted properly</p> <p>19 in his role as police officer?</p> <p>20 A. No. 11:46:18</p> <p>21 MR. WELCH: Objection.</p> <p>22 Q. What was the basis of your</p> <p>23 conclusion?</p> <p>24 A. The sum and substance of the</p> <p>25 statements that we took. 11:46:25</p>	<p>1 Cherry</p> <p>2 A. I don't know.</p> <p>3 Q. What was Mr. Hesse's response?</p> <p>4 A. He agreed.</p> <p>5 Q. At that time he agreed? 11:47:27</p> <p>6 A. Yes.</p> <p>7 Q. So this is somewhere in the very</p> <p>8 beginning of November?</p> <p>9 A. Well, yes. By the first</p> <p>10 probably -- I don't know the date of the last 11:47:35</p> <p>11 statement I took, but it was sometime probably</p> <p>12 in the first week of November.</p> <p>13 Q. Had you --</p> <p>14 A. To the best of my recollection.</p> <p>15 Q. And when you reached that 11:47:44</p> <p>16 conclusion had you spoken with Mr. Fiorello?</p> <p>17 A. No.</p> <p>18 MR. WELCH: Objection.</p> <p>19 Q. And at the time that you reached</p> <p>20 that conclusion had you spoken with Mr. Lamm 11:47:53</p> <p>21 about the incident?</p> <p>22 MR. WELCH: Objection.</p> <p>23 A. No.</p> <p>24 Q. At the time that you reached the</p> <p>25 conclusion had you spoken with Mr. Snyder 11:47:59</p>
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<p>1 Cherry</p> <p>2 Q. And again those statements did not</p> <p>3 include either of the Bossetti's or any of the</p> <p>4 other three individuals who were part of the</p> <p>5 incident; is that correct? 11:46:35</p> <p>6 MR. WELCH: Objection. You can</p> <p>7 answer.</p> <p>8 A. Correct.</p> <p>9 Q. Did you report your conclusion to</p> <p>10 anybody? 11:46:48</p> <p>11 A. I told George what my feelings</p> <p>12 were.</p> <p>13 Q. When did you tell George that?</p> <p>14 A. After we finished taking the</p> <p>15 initial statements that I took. 11:46:57</p> <p>16 Q. What exactly did you tell George?</p> <p>17 A. That it appeared that Gary acted</p> <p>18 properly. That he came to the defense of a</p> <p>19 third person and then continued to defend</p> <p>20 himself. 11:47:10</p> <p>21 Q. Did you put your conclusion in</p> <p>22 writing in any way?</p> <p>23 A. No.</p> <p>24 Q. Do you know whether Mr. Hesse took</p> <p>25 any notes of your conclusion? 11:47:20</p>	<p>1 Cherry</p> <p>2 about the incident?</p> <p>3 MR. WELCH: Objection.</p> <p>4 A. No.</p> <p>5 Q. Do you think it would have been 11:48:03</p> <p>6 important to speak to the three of them prior</p> <p>7 to reaching the conclusion?</p> <p>8 MR. WELCH: Objection.</p> <p>9 A. Well, it was not my -- I didn't</p> <p>10 feel that I was the person to speak to them. 11:48:15</p> <p>11 Q. Why?</p> <p>12 A. I believe that was either the</p> <p>13 sergeant or the chief's job to interview them.</p> <p>14 Q. Did anyone tell you that they were</p> <p>15 going to interview them? 11:48:28</p> <p>16 A. No.</p> <p>17 Q. Do you know whether either of the</p> <p>18 three of them were interviewed prior to</p> <p>19 reaching your conclusion that Mr. Hesse</p> <p>20 concurring with your conclusion? 11:48:35</p> <p>21 A. No.</p> <p>22 Q. You don't know one way or the</p> <p>23 other?</p> <p>24 A. No.</p> <p>25 Q. Do you know whether any of the 11:48:44</p>

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1 Cherry
 2 three -- well, actually more than three
 3 civilians in the fight. Whether Mr. Van Koot,
 4 Mr. Shallek or Mr. Tesoro were interviewed by
 5 Mr. Hesse or Mr. Paradiso prior to reaching 11:48:55
 6 your conclusion?
 7 A. No.
 8 **Q. Do you know whether they ever**
 9 **interviewed any of the three of them?**
 10 A. I don't know. 11:49:04
 11 **Q. Did you ever interview any of the**
 12 **three of them?**
 13 A. No.
 14 MR. WELCH: Objection.
 15 **Q. Do you think it would have been 11:49:08**
 16 **important to interview the three of them**
 17 **before reaching a conclusion as to what**
 18 **happened?**
 19 MR. WELCH: Objection. Asked and
 20 answered. You can answer again. 11:49:21
 21 A. They had given their statements
 22 already to these officers, and I felt based on
 23 what the other witnesses said that Bossetti,
 24 Gary Bossetti acted within his duties as a
 25 police officer. I didn't feel myself it was 11:49:41

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1 Cherry
 2 necessary to speak to them.
 3 **Q. Had you reviewed their statements**
 4 **prior to reaching the conclusion?**
 5 A. I read the statements. 11:49:48
 6 **Q. Did you believe them to be**
 7 **credible?**
 8 A. I think they left out part of
 9 their -- you know, what happened prior to them
 10 getting involved in the fight. So I don't 11:50:02
 11 know -- we didn't know how the fight or
 12 alleged fight actually started, and I think
 13 that was important to find out what caused the
 14 fight and who started it and what happened.
 15 That is what we were looking into, how did 11:50:18
 16 this whole thing start.
 17 **Q. Right. So you thought it was**
 18 **important to learn that from them, but you**
 19 **never asked them, correct?**
 20 A. I thought it was important to find 11:50:28
 21 out what happened, what actually happened by
 22 interviewing other witnesses. It appeared to
 23 me that it was only half the story there.
 24 **Q. Did you think it was important to**
 25 **find out what happened before the fight from 11:50:38**

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1 Cherry
 2 **everybody who was there?**
 3 MR. WELCH: Objection. You can
 4 answer.
 5 A. Yes. 11:50:43
 6 **Q. Did you believe Mr. Wycoff's**
 7 **statement to be accurate and credible when you**
 8 **read it in the beginning of the season of '05?**
 9 A. Yes.
 10 **Q. I note in here that he did not 11:51:04**
 11 **mention anything about a pool cue again. Do**
 12 **you think that that was strange that he didn't**
 13 **mention anything about the pool cue being**
 14 **used?**
 15 MR. WELCH: Objection. Did you 11:51:14
 16 review the document and know what it
 17 says?
 18 A. I have not read it recently, but I
 19 did read it. Give me a moment and I will read
 20 it again. 11:51:22
 21 MR. WELCH: Do you want him to
 22 read it again?
 23 **Q. I will represent that there is**
 24 **nothing in there about a pool cue?**
 25 MR. WELCH: Based on that 11:51:29

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1 Cherry
 2 representation -- what was the question?
 3 **Q. Do you think it is strange that he**
 4 **didn't mention that a pool cue was used as**
 5 **part of the fight? 11:51:37**
 6 MR. WELCH: Objection. You can
 7 answer.
 8 A. I don't know what he saw and what
 9 he didn't see. This is his statement.
 10 **Q. And did you ever read the 11:51:44**
 11 **statements that were given by the three on**
 12 **duty police officers that night?**
 13 MR. WELCH: Objection. You can
 14 answer.
 15 A. I eventually read them, yes. 11:51:54
 16 **Q. And when did you read those?**
 17 A. Again in the early part of the '05
 18 season.
 19 **Q. So you didn't read them as part of**
 20 **your -- in reaching your conclusion as to what 11:52:08**
 21 **happened that night?**
 22 A. No.
 23 **Q. So what did you actually -- other**
 24 **than the statements that you took what did you**
 25 **review in reaching your conclusion? 11:52:20**

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<p style="text-align: right;">Page 401</p> <p>1 Cherry</p> <p>2 A. The statements of Jeanne Jaeger,</p> <p>3 Elyse Myller, Sean O'Rourke, and the other</p> <p>4 person, I am trying to think of his name. Ian</p> <p>5 Levine. 11:52:44</p> <p>6 Q. Other than for those four people's</p> <p>7 statements did you read anything else in</p> <p>8 reaching your conclusion?</p> <p>9 A. The three statements that the</p> <p>10 officers who responded that night took. 11:52:55</p> <p>11 Q. Those were Mr. Shallek, Mr. Tesoro</p> <p>12 and Mr. Van Koot?</p> <p>13 A. Correct.</p> <p>14 Q. Did you read any other documents</p> <p>15 in connection with reaching your conclusions 11:53:04</p> <p>16 as to what happened that night?</p> <p>17 MR. WELCH: Objection. You can</p> <p>18 answer.</p> <p>19 A. I believe I read the field report</p> <p>20 also. 11:53:12</p> <p>21 Q. Anything else that you reviewed in</p> <p>22 reaching that conclusion?</p> <p>23 A. Not that I can recall.</p> <p>24 Q. And other than for the people's</p> <p>25 statements that you took did you speak with 11:53:21</p>	<p style="text-align: right;">Page 403</p> <p>1 Cherry</p> <p>2 statement.</p> <p>3 Q. Would it surprise you if it was</p> <p>4 not in the statement?</p> <p>5 MR. WELCH: Objection. 11:54:22</p> <p>6 A. Would it surprise me if it was not</p> <p>7 in his statement; it might if I thought he was</p> <p>8 one of the persons that called. It might --</p> <p>9 it would surprise because he was a person who</p> <p>10 called -- I believe he was one of the persons 11:54:38</p> <p>11 who called the Police Department.</p> <p>12 MR. GOODSTADT: Please mark this</p> <p>13 as Cherry Exhibit 19.</p> <p>14 (Cherry Exhibit 19, two-page</p> <p>15 document, Bates 3167 through 3168, marked 11:55:20</p> <p>16 for identification, as of this date.)</p> <p>17 Q. I place in front of Mr. Cherry</p> <p>18 what has been marked as Cherry Exhibit 19, it</p> <p>19 is a two-page exhibit bearing Bates 3167</p> <p>20 through 3168. Mr. Cherry, do you recognize 11:55:23</p> <p>21 the document marked as Cherry Exhibit 19?</p> <p>22 A. Yes.</p> <p>23 Q. What is this document?</p> <p>24 A. It is a statement of Sean</p> <p>25 O'Rourke. 11:55:32</p>
<p style="text-align: right;">Page 402</p> <p>1 Cherry</p> <p>2 anybody as part of your role in the</p> <p>3 investigation about what happened that night?</p> <p>4 A. No. Nobody else other than the</p> <p>5 people that we took statements from. 11:53:29</p> <p>6 Q. I believe you testified that you</p> <p>7 relied on Sean O'Rourke's statement as part of</p> <p>8 the analysis that went into your conclusion;</p> <p>9 is that correct?</p> <p>10 A. Yes. 11:53:42</p> <p>11 Q. Who is Sean O'Rourke?</p> <p>12 A. Sean O'Rourke is a resident of</p> <p>13 Ocean Beach.</p> <p>14 Q. And why did you take his</p> <p>15 statement? 11:53:50</p> <p>16 A. I believe he was the -- one of the</p> <p>17 persons who was working that night as a</p> <p>18 doorman, and that he was one of the persons I</p> <p>19 believe that called the Police Department.</p> <p>20 Q. He was one of the persons who 11:54:05</p> <p>21 called the police, is that what you said?</p> <p>22 A.. I believe so.</p> <p>23 Q. How did you learn that he was one</p> <p>24 of the persons who called the police?</p> <p>25 A. I believe it might be in his 11:54:12</p>	<p style="text-align: right;">Page 404</p> <p>1 Cherry</p> <p>2 Q. When was the last time that you</p> <p>3 reviewed this statement?</p> <p>4 A. Probably sometime early in the</p> <p>5 year. 11:55:38</p> <p>6 Q. Earlier this year?</p> <p>7 A. Yes.</p> <p>8 Q. When?</p> <p>9 A. When we found out that I was going</p> <p>10 to be deposed. 11:55:44</p> <p>11 Q. So that was last year actually,</p> <p>12 '08?</p> <p>13 A. Yes.</p> <p>14 Q. Why don't you take a minute to</p> <p>15 review it? 11:55:50</p> <p>16 A. Okay.</p> <p>17 Q. Have you had a chance to review it</p> <p>18 now?</p> <p>19 A. Yes, I have.</p> <p>20 Q. Is this a statement that you took 11:56:40</p> <p>21 from Mr. O'Rourke?</p> <p>22 A. Yes, sir.</p> <p>23 Q. That was on or about November 5,</p> <p>24 2004?</p> <p>25 A. Yes, sir. 11:56:47</p>

9 (Pages 401 to 404)

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1 Cherry
 2 **Q. The signature on the bottom left**
 3 **of page 1 and the bottom left of page 2, is**
 4 **that your signature?**
 5 A. Yes. 11:56:53
 6 **Q. It says PO PJ Cherry, SH 426,**
 7 **OBDP, do you see that?**
 8 A. Yes.
 9 **Q. What does PO stand for?**
 10 A. Police officer. 11:57:06
 11 **Q. So you signed this as a police**
 12 **officer?**
 13 A. Yes, sir.
 14 **Q. Even though you were a civilian at**
 15 **the time?** 11:57:12
 16 MR. WELCH: Objection.
 17 A. I was still working as a police
 18 officer at that time.
 19 **Q. But you were not certified to work**
 20 **as a police officer in Suffolk County at the** 11:57:19
 21 **time; is that correct?**
 22 MR. WELCH: Objection. Asked and
 23 answered. You can answer again.
 24 A. I don't know if I was certified or
 25 not. I was hired as a police officer, I 11:57:26

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1 Cherry
 2 thought I was a police officer.
 3 **Q. What is SH 426, that is your**
 4 **shield number?**
 5 A. That is correct. 11:57:34
 6 **Q. Are you aware that Mr. O'Rourke**
 7 **had been arrested by George Hesse for cocaine**
 8 **possession?**
 9 A. Yes.
 10 **Q. Were you aware at the time of this** 11:57:43
 11 **statement that he had been arrested for**
 12 **cocaine possession?**
 13 A. Yes.
 14 **Q. Did that play any role in your**
 15 **credibility assessment of Mr. O'Rourke?** 11:57:51
 16 A. No.
 17 **Q. Did you ask Mr. O'Rourke whether**
 18 **he was drinking that night?**
 19 A. No.
 20 **Q. Do you think that would have been** 11:58:02
 21 **important to know whether he was drinking that**
 22 **night?**
 23 MR. WELCH: Objection.
 24 A. No. It was important what he
 25 remembered. 11:58:10

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1 Cherry
 2 **Q. So you think that if he had been**
 3 **drinking it could have affected his ability of**
 4 **what he remembered?**
 5 A. I don't know. 11:58:17
 6 **Q. You don't know one way or the**
 7 **other?**
 8 A. No.
 9 **Q. You are a trained detective and**
 10 **don't know whether alcohol intake can affect** 11:58:22
 11 **somebody's memory of certain events?**
 12 MR. WELCH: Objection.
 13 A. Well, it would probably depend on
 14 how much he had and whether he was drinking or
 15 not. 11:58:32
 16 **Q. But you didn't ask him any of**
 17 **those questions?**
 18 A. Right. So we don't know.
 19 **Q. Where was the statement taken?**
 20 A. In the Ocean Beach police station. 11:58:42
 21 **Q. Did you call him to come in to**
 22 **give a statement?**
 23 A. No.
 24 **Q. Do you know whether anyone called**
 25 **him to come in to give a statement?** 11:58:52

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1 Cherry
 2 A. I believe George Hesse called him.
 3 **Q. Were you there when George Hesse**
 4 **called him?**
 5 A. No. I may have been, I didn't -- 11:58:56
 6 he came in to give a statement, and he just
 7 came in to give -- so I assume somebody called
 8 him to come in because I was working that day.
 9 **Q. How was it determined that you**
 10 **would take his statement as opposed to Mr.** 11:59:13
 11 **Hesse?**
 12 A. Sergeant Hesse asked me to take
 13 it.
 14 **Q. What did he say to you?**
 15 A. He said take the statement, could 11:59:21
 16 you take Mr. O'Rourke's statement.
 17 **Q. Was anybody else present when you**
 18 **were taking the statement?**
 19 A. I don't believe so, no.
 20 **Q. So just you and Mr. O'Rourke in** 11:59:31
 21 **the police station?**
 22 A. Well, there might have been other
 23 people in the police station, but I was taking
 24 the statement from Mr. O'Rourke. I mean
 25 people are going in and out all the time. 11:59:40

<p style="text-align: right;">Page 409</p> <p>1 Cherry</p> <p>2 Q. Had you spoken to Mr. O'Rourke</p> <p>3 prior to taking a statement about the</p> <p>4 Halloween incident?</p> <p>5 A. No. 11:59:48</p> <p>6 Q. Did you ask him any specific</p> <p>7 questions for the statement or he just gave</p> <p>8 you a narrative?</p> <p>9 A. I asked him what happened, he gave</p> <p>10 me a narrative, which is basically this. 11:59:55</p> <p>11 Q. So you didn't ask any other</p> <p>12 questions other than for what happened?</p> <p>13 A. The only question I asked him, he</p> <p>14 was telling me about the incident. He said</p> <p>15 one of the Bossetti's, he said I don't know 12:00:08</p> <p>16 his first name, I don't know whether it is</p> <p>17 Richie or Gary. I said well can you tell the</p> <p>18 difference between them, and he said yes. I</p> <p>19 said what do you know him, who do you think,</p> <p>20 what name do you think -- who do you think it 12:00:22</p> <p>21 was, Richie or Gary as far as the name goes;</p> <p>22 and he said I think it was Richie.</p> <p>23 I said -- then I said you sure you</p> <p>24 can identify, tell them apart. He said yes.</p> <p>25 I said okay, if you think his name is Richie, 12:00:41</p>	<p style="text-align: right;">Page 411</p> <p>1 Cherry</p> <p>2 was involved he wasn't sure of. He wasn't</p> <p>3 sure it was Richie or Gary. He knew which</p> <p>4 Bossetti was involved in it by facial</p> <p>5 recognition, but he wasn't sure of what 12:01:33</p> <p>6 brother that was.</p> <p>7 Q. How do you know that he knew which</p> <p>8 Bossetti was involved; did you put pictures in</p> <p>9 front of him?</p> <p>10 A. No. I asked him if he knew the 12:01:43</p> <p>11 difference between which two brothers. They</p> <p>12 are facially -- they are not identical</p> <p>13 twins -- they are not -- they are not</p> <p>14 identical. You can tell them apart, they</p> <p>15 don't look the same. 12:02:00</p> <p>16 Q. No, I understand that. But when</p> <p>17 he told you it was Rich Bossetti how did you</p> <p>18 know that he actually saw Gary Bossetti, was</p> <p>19 just getting his name wrong?</p> <p>20 A. Well, I said there was a problem 12:02:11</p> <p>21 with this, could you identify him from a photo</p> <p>22 pack or in person, he said yes.</p> <p>23 Q. Did he identify him?</p> <p>24 A. No. I said if need be we would</p> <p>25 show you a picture. 12:02:23</p>
<p style="text-align: right;">Page 410</p> <p>1 Cherry</p> <p>2 we will use Richie. That is why his name is</p> <p>3 Richie here, not Gary.</p> <p>4 Q. So he mis-identified who was in</p> <p>5 the fight; right? 12:00:44</p> <p>6 A. No.</p> <p>7 MR. WELCH: Objection.</p> <p>8 A. He wasn't sure what the first name</p> <p>9 of the Bossetti that was involved in the fight</p> <p>10 was. 12:00:53</p> <p>11 Q. But he knew the difference between</p> <p>12 the two; correct?</p> <p>13 A. Yes. He knew the difference</p> <p>14 facially, but he was not sure who was who, you</p> <p>15 follow me? 12:01:00</p> <p>16 Q. I don't follow.</p> <p>17 A. I had the same problem with the</p> <p>18 Bossetti brothers --</p> <p>19 MR. WELCH: There is no question</p> <p>20 pending. 12:01:08</p> <p>21 Q. What did he tell you his problem</p> <p>22 was with identifying the Bossetti's?</p> <p>23 MR. WELCH: Objection.</p> <p>24 A. Which -- it was not which</p> <p>25 Bossetti, it was the name of the Bossetti that 12:01:22</p>	<p style="text-align: right;">Page 412</p> <p>1 Cherry</p> <p>2 Q. How come none of that is recorded</p> <p>3 in your statement?</p> <p>4 MR. WELCH: Objection.</p> <p>5 A. I just didn't put it in. 12:02:29</p> <p>6 Q. How come?</p> <p>7 A. I didn't think it was necessary.</p> <p>8 I am explaining it now. If it had to be</p> <p>9 explained, I would explain it. As a matter of</p> <p>10 fact I told Sergeant Hesse that he had a 12:02:44</p> <p>11 problem with -- not with -- which, the name of</p> <p>12 the Bossetti that was involved. He knew which</p> <p>13 Bossetti it was, he was not sure whether the</p> <p>14 name was Gary or Richie. I explained that to</p> <p>15 the sergeant if in fact we needed to get 12:02:59</p> <p>16 identification he could pick out the Bossetti</p> <p>17 that was involved either from a photo pack or</p> <p>18 in person.</p> <p>19 Q. How long has Sean O'Rourke worked</p> <p>20 in Ocean Beach? 12:03:12</p> <p>21 A. I don't know. He lives there. I</p> <p>22 don't know how long he has worked there.</p> <p>23 Q. How many years have the Bossetti's</p> <p>24 been working there?</p> <p>25 A. At that time I guess about two 12:03:19</p>

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1 Cherry
 2 years or so. Two or three. I am not sure of
 3 the number.
 4 **Q. How come you didn't show him a**
 5 **picture at the time to make sure that his** 12:03:26
 6 **statement was accurate?**
 7 MR. WELCH: Objection.
 8 A. We didn't have a photo pack
 9 prepared, and rather than just show him one
 10 picture or two pictures of the brothers I 12:03:38
 11 decided to wait, and if we needed
 12 identification we could do it the proper way.
 13 **Q. Were there any pictures of the**
 14 **Bossetti's available to you at the time?**
 15 A. I mean -- not -- I didn't have any 12:03:53
 16 pictures of them at the time I was
 17 interviewing or taking the statement from
 18 Mr. O'Rourke.
 19 **Q. So is it your testimony that there**
 20 **were no pictures of the Bossetti's available** 12:04:02
 21 **at the police station that you could have**
 22 **shown him?**
 23 MR. WELCH: Objection.
 24 A.. There probably was an ID photo in
 25 the computer, but I didn't feel to show him 12:04:10

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1 Cherry
 2 one picture would be the right thing to do.
 3 **Q. Pictures of him on the wall?**
 4 MR. WELCH: Objection.
 5 A. I don't know. 12:04:18
 6 **Q. He references in the statement**
 7 **about a bartender named Mr. McKenna, do you**
 8 **see that; the first page, ninth line down?**
 9 A. I am sorry, how far down -- I see.
 10 **Q. The bartender, Don McKenna --** 12:04:43
 11 A. Dan McKenna.
 12 **Q. Dan McKenna, there was a problem**
 13 **near the bathroom, do you see that?**
 14 A. Yes.
 15 **Q. Did you speak with Dan McKenna at** 12:04:49
 16 **all as part of your investigation?**
 17 A. No, I didn't.
 18 **Q. Do you know whether anyone did?**
 19 A. I don't think so..
 20 **Q. Did you ask Mr. O'Rourke why he** 12:04:57
 21 **didn't give a statement the night of the**
 22 **incident?**
 23 A. He said he tried to tell one of
 24 the officers what he knew, but they wouldn't
 25 talk to them. 12:05:07

1 Cherry
 2 **Q. Which officer did he try to tell?**
 3 A. He didn't say. He said one of the
 4 officers.
 5 **Q. Did you ask him which officer?** 12:05:12
 6 A. No.
 7 **Q. How come?**
 8 A. I didn't think it was important at
 9 the time I was taking the statement.
 10 **Q. Now looking through this could you** 12:05:22
 11 **point to me where in the statement it said**
 12 **that Sean O'Rourke called the police?**
 13 A. In reading the statement it is not
 14 in there.
 15 **Q. It is not in there; right?** 12:05:37
 16 A. That is correct.
 17 **Q. So how do you know that Sean**
 18 **O'Rourke called the police?**
 19 A. I am not sure. It might have been
 20 in one of the other statements that I 12:05:48
 21 recalled, or that is what was told to me at
 22 the time to the best of my recollection, that
 23 he was one of the people that called. I
 24 didn't receive the call so I don't know for
 25 sure exactly. 12:05:55

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1 Cherry
 2 **Q. Did he tell you that he made the**
 3 **call to the police?**
 4 A. If he told me it probably would
 5 have been in here at the time that he gave he 12:06:01
 6 the statement.
 7 **Q. Do you think it was an important**
 8 **fact that he left out that he made the call to**
 9 **the police?**
 10 MR. WELCH: Objection. 12:06:08
 11 A. Well, I didn't respond to the
 12 scene. I imagine the officers that responded
 13 to the scene would have talked to the people
 14 who called to make the complaint.
 15 **Q. My question to you is in asking** 12:06:22
 16 **him what happened, the fact that he left out**
 17 **that he had called the police, don't you think**
 18 **that was an important fact to leave out of a**
 19 **statement?**
 20 MR. WELCH: Objection. You can 12:06:33
 21 answer.
 22 A. It probably would have been better
 23 if it was in there, yes, I agree do that. But
 24 I took what he told me.
 25 **Q. Did the fact that he left out the** 12:06:45

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<p>1 Cherry</p> <p>2 fact that it should have been in there, did</p> <p>3 that affect your view on his credibility?</p> <p>4 MR. WELCH: Objection. You can</p> <p>5 answer. 12:06:52</p> <p>6 A. No, I don't think so.</p> <p>7 Q. Do you know whether he was friends</p> <p>8 with George Hesse?</p> <p>9 A. Mr. O'Rourke?</p> <p>10 Q. Yes. 12:07:01</p> <p>11 A. They are acquaintances. You know,</p> <p>12 George has been there at the time for 14</p> <p>13 years. He knows most of the people in the</p> <p>14 village. To say friends, I don't think they</p> <p>15 were friends. 12:07:13</p> <p>16 Q. Do you know whether Gary Bossetti</p> <p>17 is friends with Sean O'Rourke?</p> <p>18 A. I don't believe so, no.</p> <p>19 Q. How about Richard Bossetti?</p> <p>20 A.. I don't believe so. 12:07:21</p> <p>21 Q. Did you ask him why he didn't go</p> <p>22 to the police station to give a statement that</p> <p>23 night?</p> <p>24 A. No.</p> <p>25 Q.. How long did this interview last? 12:07:30</p>	<p>1 Cherry</p> <p>2 discrepancy and exactly the name discrepancy.</p> <p>3 Q. Did you discuss anything else with</p> <p>4 Mr. Hesse about the statement other than for</p> <p>5 the name discrepancy? 12:08:41</p> <p>6 A. No.</p> <p>7 Q. I note in here that Mr. O'Rourke</p> <p>8 doesn't mention anything about a pool cue.</p> <p>9 Did you think that was strange that he left</p> <p>10 that part out? 12:08:52</p> <p>11 MR. WELCH: Objection. The</p> <p>12 document speaks for itself. You can</p> <p>13 answer.</p> <p>14 A. That is exactly, that was his</p> <p>15 statement, he didn't mention anything about a 12:08:56</p> <p>16 pool cue.</p> <p>17 Q. The fact that he doesn't mention</p> <p>18 anything about a pool cue, did that affect</p> <p>19 your analysis of his credibility?</p> <p>20 A. No, because I don't know if he saw 12:09:04</p> <p>21 the incident with the pool cue or not.</p> <p>22 Q. In any of your statements that you</p> <p>23 took did anybody mention anything about a pool</p> <p>24 cue being used?</p> <p>25 A. I don't believe so, no. 12:09:14</p>
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<p>1 Cherry</p> <p>2 A. I would say twenty minutes to a</p> <p>3 half hour.</p> <p>4 Q. Is there anything that he told you</p> <p>5 other than this purported conversation about 12:07:47</p> <p>6 the difference between Gary and Richard</p> <p>7 Bossetti that is not in your statement?</p> <p>8 A. Not that I can recall, no.</p> <p>9 Q. Is there anything that would</p> <p>10 refresh your recollection as to whether there 12:08:05</p> <p>11 was anything else that he told you that was</p> <p>12 not reflected in your statement?</p> <p>13 A. No.</p> <p>14 Q. Did you take any other notes for</p> <p>15 this statement other than for this written 12:08:14</p> <p>16 statement that you have?</p> <p>17 A. I don't believe so, no.</p> <p>18 Q. Did you write this statement down</p> <p>19 as he was giving it to you or is it something</p> <p>20 that you prepared after you finished the 12:08:24</p> <p>21 interview?</p> <p>22 A. As he was giving it to me.</p> <p>23 Q. Did you speak with George Hesse</p> <p>24 about this statement at all?</p> <p>25 A. Yes. I told him about the 12:08:30</p>	<p>1 Cherry</p> <p>2 Q. Did you know that a pool cue</p> <p>3 allegedly had been used when you were taking</p> <p>4 these statements?</p> <p>5 A. Yes. I believe it was in one of 12:09:23</p> <p>6 the statements of the three witnesses that the</p> <p>7 officers, the responding officers took.</p> <p>8 Q. The fact that none of these</p> <p>9 witnesses whose statements that you took</p> <p>10 mentioned a pool cue, did that affect your 12:09:36</p> <p>11 analysis of their credibility at all?</p> <p>12 A. No.</p> <p>13 Q. Did you ask any of them about</p> <p>14 whether they saw a pool cue being used?</p> <p>15 A. I don't believe so, no. 12:09:49</p> <p>16 Q. Why not?</p> <p>17 A. I wanted their statement, I didn't</p> <p>18 want to put anything into their mouth, mention</p> <p>19 anything that could be a leading question. I</p> <p>20 wanted to know what their recollection was. 12:09:59</p> <p>21 Q. The fact that they didn't mention</p> <p>22 anything about a pool cue, you didn't believe</p> <p>23 that that could lead to the conclusion that</p> <p>24 they were protecting Gary Bossetti?</p> <p>25 MR. WELCH: Objection. You can 12:10:12</p>

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<p>1 Cherry</p> <p>2 answer.</p> <p>3 A. No.</p> <p>4 Q. Have you spoken to Mr. O'Rourke</p> <p>5 about the Halloween incident other than for 12:10:26</p> <p>6 November 4th when he came in and you took his</p> <p>7 statement?</p> <p>8 A. No.</p> <p>9 Q.. I believe you testified that you</p> <p>10 took Ms. Jaegger's statement as well; is that 12:10:36</p> <p>11 correct?</p> <p>12 A. That is correct.</p> <p>13 Q. When did you take that statement?</p> <p>14 A. Where?</p> <p>15 Q. When? 12:10:41</p> <p>16 A. I don't recall the exact date. I</p> <p>17 think it may have been November 6th. If you</p> <p>18 have a copy of it I can tell you exactly.</p> <p>19 Q. Where did you take the statement?</p> <p>20 A. At her home. 12:10:52</p> <p>21 Q. So you went out to her house to</p> <p>22 take the statement?</p> <p>23 A. Yes.</p> <p>24 Q. Did you do that on your own or</p> <p>25 somebody asked you to do that? 12:10:58</p>	<p>1 Cherry</p> <p>2 end that any false statement made herein is</p> <p>3 punishable as a class A misdemeanor under the</p> <p>4 Penal Law section.</p> <p>5 MR. GOODSTADT: Would you mark 12:12:02</p> <p>6 this document as Cherry Exhibit 20,</p> <p>7 document number 003162 through 3164.</p> <p>8 (Cherry Exhibit 20, document</p> <p>9 number 003162 through 3164, marked for</p> <p>10 identification, as of this date.) 12:12:42</p> <p>11 Q. I place in front of Mr. Cherry</p> <p>12 what has been marked as Cherry Exhibit 20. It</p> <p>13 is a three-page exhibit bearing Bates numbers</p> <p>14 3162 through 3164.</p> <p>15 Mr. Cherry, have you ever seen the 12:12:59</p> <p>16 document that is marked as Cherry Exhibit 20?</p> <p>17 A. Yes.</p> <p>18 Q. What is this document?</p> <p>19 A. This is the statement of Jeanne C.</p> <p>20 Jaeger taken on November 7, 2004. 12:13:12</p> <p>21 Q. Who was present when you took this</p> <p>22 statement?</p> <p>23 A. George Hesse and myself and</p> <p>24 Mrs. Jaeger.</p> <p>25 Q. Was anyone else there? 12:13:20</p>
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<p>1 Cherry</p> <p>2 A. George Hesse and I went to her</p> <p>3 house to take the statement.</p> <p>4 Q. Whose decision was it to go to her</p> <p>5 house to take the statement? 12:11:07</p> <p>6 A. George's.</p> <p>7 Q. Do you know why he wanted to go to</p> <p>8 her house to take a statement?</p> <p>9 A. Yes. She was -- I don't believe</p> <p>10 she was coming back to the island and she 12:11:16</p> <p>11 lived locally, so we decided to go to her</p> <p>12 house and take a statement.</p> <p>13 Q. Has she provided a statement other</p> <p>14 than for the one that you took that you are</p> <p>15 aware of? 12:11:27</p> <p>16 A. Yes.</p> <p>17 Q. Did you review that statement</p> <p>18 prior to going to take her statement?</p> <p>19 A. Yes.</p> <p>20 Q. So if you already had her 12:11:32</p> <p>21 statement why did you go and take another</p> <p>22 statement from her?</p> <p>23 A. To put it in more deposition form.</p> <p>24 Q. What do you mean by that?</p> <p>25 A. Take it and put the caveat on the 12:11:41</p>	<p>1 Cherry</p> <p>2 A. No.</p> <p>3 Q. Her husband was not there?</p> <p>4 A. No.</p> <p>5 Q. If you look at the bottom left 12:13:25</p> <p>6 corner of pages 1, 2 and 3, is that your</p> <p>7 signature?</p> <p>8 A. Yes, it is.</p> <p>9 Q. Under your signature there appears</p> <p>10 to be a signature. Whose signature is that? 12:13:34</p> <p>11 A. That is George Hesse's signature.</p> <p>12 Q. Again he is signing as sergeant</p> <p>13 103/OBPD, do you see that?</p> <p>14 A. Yes..</p> <p>15 Q. That was his shield number, 103? 12:13:48</p> <p>16 A. Yes.</p> <p>17 Q. Other than for this statement did</p> <p>18 he -- did the two of you take a statement</p> <p>19 together from any other witnesses?</p> <p>20 A. He was at the station house when I 12:13:57</p> <p>21 took some of the statements. Unless he</p> <p>22 actually signed it he was not there with me.</p> <p>23 Q. Now this is your handwriting?</p> <p>24 A. Yes.</p> <p>25 Q. How was it decided that you would 12:14:16</p>

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<p style="text-align: right;">Page 425</p> <p>1 Cherry</p> <p>2 write out the statement as opposed to Mr.</p> <p>3 Hesse?</p> <p>4 A. Because I had more experience in</p> <p>5 taking statements, and Sergeant Hesse asked me 12:14:25</p> <p>6 to take it.</p> <p>7 Q. Now she Ms. Jaeger is one of the</p> <p>8 original purported victims of that night; is</p> <p>9 that correct?</p> <p>10 MR. WELCH: Objection. 12:14:35</p> <p>11 A. Apparently, yes.</p> <p>12 Q. Did you reach a conclusion that</p> <p>13 she was a victim that night?</p> <p>14 A. Yes.</p> <p>15 Q. Did you ask her whether she was 12:14:42</p> <p>16 drinking that night?</p> <p>17 A. I don't believe so.</p> <p>18 Q. Do you know whether she was</p> <p>19 drinking that night?</p> <p>20 A. I don't know. 12:14:53</p> <p>21 Q. Do you think it would be important</p> <p>22 to know whether she was drinking that night?</p> <p>23 MR. WELCH: Objection. You can</p> <p>24 answer.</p> <p>25 A. I don't think it would be that 12:14:58</p>	<p style="text-align: right;">Page 427</p> <p>1 Cherry</p> <p>2 Q. So why didn't you ask her?</p> <p>3 MR. WELCH: Objection. Asked and</p> <p>4 answered. You can answer again.</p> <p>5 A. I didn't ask her. 12:16:01</p> <p>6 Q. This was done on November 7, 2004;</p> <p>7 correct?</p> <p>8 A. Correct.</p> <p>9 Q. Why did you wait a week to go meet</p> <p>10 with her? 12:16:10</p> <p>11 A. Availability. She was available.</p> <p>12 Q. Based on her availability?</p> <p>13 A. Yes.</p> <p>14 Q. Did you try to speak with her</p> <p>15 prior to November 7, 2004? 12:16:16</p> <p>16 A. I believe I spoke to her on the</p> <p>17 phone prior to that making arrangements to</p> <p>18 come and talk to her about the -- telling her</p> <p>19 me take the statement.</p> <p>20 Q. Was that at Mr. Hesse's suggestion 12:16:25</p> <p>21 that you called her?</p> <p>22 A. I called her to see -- because she</p> <p>23 had forwarded a statement, you know, a</p> <p>24 statement to the Police Department.</p> <p>25 Q. My question is did you call her at 12:16:39</p>
<p style="text-align: right;">Page 426</p> <p>1 Cherry</p> <p>2 important, no.</p> <p>3 Q. Well, you testified before that if</p> <p>4 somebody drank a lot it could affect their</p> <p>5 ability to recall events; is that correct? 12:15:06</p> <p>6 A. I would say it would depend on how</p> <p>7 much they drank and if they drank at all, it</p> <p>8 might.</p> <p>9 Q. So you don't think it would be</p> <p>10 important to know at all whether she drank, 12:15:17</p> <p>11 and if she did how much she drank?</p> <p>12 A. The important thing is what she</p> <p>13 remembered.</p> <p>14 Q. But the amount that she drank</p> <p>15 could affect her ability to recall; correct? 12:15:36</p> <p>16 MR. WELCH: Objection. You can</p> <p>17 answer.</p> <p>18 A. I don't know.</p> <p>19 Q. But in your experience 30 years as</p> <p>20 a detective you don't know one way or the 12:15:44</p> <p>21 other whether the amount that somebody drinks</p> <p>22 can affect their ability to recall events?</p> <p>23 MR. WELCH: Objection.</p> <p>24 Q. Is that what you are telling us?</p> <p>25 A. It is a possibility I believe. 12:15:53</p>	<p style="text-align: right;">Page 428</p> <p>1 Cherry</p> <p>2 George Hesse's request or did you do it on</p> <p>3 your own?</p> <p>4 A. No, I called her.</p> <p>5 Q. What was the location of the house 12:16:45</p> <p>6 that you took the statement at?</p> <p>7 A. 17 Wood Lane, Smithtown, New York.</p> <p>8 Q. So you traveled out to Smithtown</p> <p>9 for this?</p> <p>10 A. Yes. 12:17:03</p> <p>11 Q. Were you on duty at the time?</p> <p>12 A. Yes.</p> <p>13 Q. Was Mr. Hesse on duty at the time?</p> <p>14 A. Yes.</p> <p>15 Q. Was this statement given based on 12:17:08</p> <p>16 the narrative or did you ask her specific</p> <p>17 questions?</p> <p>18 A. I had spoken to her on the phone</p> <p>19 earlier and going over the narrative, I had</p> <p>20 the narrative that she gave us originally 12:17:19</p> <p>21 faxed to us, and she redid the narrative and I</p> <p>22 wrote it down as she was giving it to us.</p> <p>23 Q. Did you know her prior to speaking</p> <p>24 to her on this issue?</p> <p>25 A. No. 12:17:34</p>

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<p style="text-align: right;">Page 429</p> <p>1 Cherry</p> <p>2 Q. Do you know whether Mr. Hesse did?</p> <p>3 A. I believe he did, yes.</p> <p>4 Q. Do you know whether he was friends</p> <p>5 with her? 12:17:40</p> <p>6 A. I don't know.</p> <p>7 Q. Do you know whether he is friends</p> <p>8 with her husband, her late husband?</p> <p>9 A. I don't know.</p> <p>10 Q. If you look at the second page of 12:17:46</p> <p>11 this exhibit and the second paragraph down?</p> <p>12 A. Okay.</p> <p>13 Q. The second line of the second</p> <p>14 paragraph says: The man then lunged at me</p> <p>15 grabbing my neck with both hands, banging me 12:18:03</p> <p>16 into the men's room door.</p> <p>17 Do you see that?</p> <p>18 A. Yes, I do.</p> <p>19 Q. Do you know whether she filed a</p> <p>20 police report that night? 12:18:13</p> <p>21 A. Did she file one that night; no.</p> <p>22 Q. How come?</p> <p>23 A. From what -- I don't know.</p> <p>24 Q. Did you ask her why she didn't</p> <p>25 file a police report after allegedly being 12:18:24</p>	<p style="text-align: right;">Page 431</p> <p>1 Cherry</p> <p>2 to -- this wasn't a criminal investigation, we</p> <p>3 were trying to find out what happened, and</p> <p>4 this is basically what happened as far as she</p> <p>5 was concerned. And this was the basis of I 12:19:25</p> <p>6 guess what Gary did and what he saw.</p> <p>7 So we didn't get into anything too</p> <p>8 much after the initial incident itself. The</p> <p>9 statement ends after she was grabbed by the</p> <p>10 neck and what happened after that, then it 12:19:41</p> <p>11 stopped. We didn't get anything after that,</p> <p>12 after that incident occurred.</p> <p>13 Q. Why didn't you go into anything</p> <p>14 after the incident occurred?</p> <p>15 A. Well I just stopped at that point. 12:19:52</p> <p>16 Q. Do you know that she went to the</p> <p>17 hospital that night?</p> <p>18 A. No.</p> <p>19 Q. You don't know or --</p> <p>20 A. She didn't. 12:20:00</p> <p>21 Q. Did you ask her why she didn't</p> <p>22 seek any medical treatment that night?</p> <p>23 A. No.</p> <p>24 Q. Are you aware that she actually</p> <p>25 went down to CJ's after Houser's? 12:20:17</p>
<p style="text-align: right;">Page 430</p> <p>1 Cherry</p> <p>2 assaulted?</p> <p>3 A. Apparently she had gone to the</p> <p>4 police station with Richie Bossetti, but they</p> <p>5 had the three people involved in the station 12:18:32</p> <p>6 house, and Richie went in to see if it was a</p> <p>7 good time to come in and have her give a</p> <p>8 statement. They said no, they were too busy.</p> <p>9 Q. And how did you learn about that</p> <p>10 she was with Richie Bossetti when they came 12:18:47</p> <p>11 back to the station?</p> <p>12 A. I believe she told us.</p> <p>13 Q. As part of her statement she told</p> <p>14 you that?</p> <p>15 A. No. 12:18:57</p> <p>16 Q. How come you didn't put that in</p> <p>17 the statement?</p> <p>18 A. Because this was the actual</p> <p>19 incident itself.</p> <p>20 Q. Well, don't you think that what 12:19:05</p> <p>21 her actions were in an effort to allegedly</p> <p>22 report the incident was part of the incident?</p> <p>23 MR. WELCH: Objection.. You can</p> <p>24 answer.</p> <p>25 A. You got to remember we were trying 12:19:11</p>	<p style="text-align: right;">Page 432</p> <p>1 Cherry</p> <p>2 MR. WELCH: Objection. Asked and</p> <p>3 answered. You can answer again.</p> <p>4 A. Whether she went to CJ's after</p> <p>5 that? 12:20:27</p> <p>6 Q. Yes.</p> <p>7 A. No.</p> <p>8 Q. You don't know one way or the</p> <p>9 other?</p> <p>10 A. I don't know. 12:20:30</p> <p>11 Q. When did you see her original</p> <p>12 statement that she faxed in?</p> <p>13 A. I'm not sure. Sometime I guess</p> <p>14 around the November 1st or 2nd.</p> <p>15 Q. Did you see the statement that her 12:20:49</p> <p>16 husband Budd Jaeger had sent in?</p> <p>17 A. Yes, I saw that.</p> <p>18 Q. That was prior to taking her</p> <p>19 statement?</p> <p>20 A. Yes. 12:20:59</p> <p>21 Q. Why didn't you go get a deposition</p> <p>22 like statement from Budd Jaeger?</p> <p>23 A. He was not at the scene.</p> <p>24 Q. Did you read a statement that came</p> <p>25 in Elyse Myller? 12:21:08</p>

<p style="text-align: right;">Page 433</p> <p>1 Cherry</p> <p>2 A. Yes.</p> <p>3 Q. How come you didn't take a</p> <p>4 statement from her in a deposition form?</p> <p>5 MR. WELCH: Objection. You can 12:21:16</p> <p>6 answer.</p> <p>7 A. I called her after we got, after I</p> <p>8 read the thing and asked her if she could</p> <p>9 send -- she had the original statement that</p> <p>10 she wrote out and she faxed to us, she said 12:21:26</p> <p>11 she did, I believe I testified that we asked</p> <p>12 her to send a notarized copy of that or</p> <p>13 notarized original to us so I have it for the</p> <p>14 record. It was a matter of logistics, she</p> <p>15 lived in the city and very difficult to 12:21:46</p> <p>16 interview her and she wasn't coming back out</p> <p>17 to the Fire Island.</p> <p>18 Q. But other than for the statements</p> <p>19 that we have looked at now as far as</p> <p>20 depositions, did you take any other statements 12:22:05</p> <p>21 in connection with your role in investigating</p> <p>22 this incident?</p> <p>23 A. The ones that we looked at</p> <p>24 already?</p> <p>25 Q. Right. 12:22:13</p>	<p style="text-align: right;">Page 435</p> <p>1 Cherry</p> <p>2 A. No.</p> <p>3 Q. Have you ever spoken to Richard</p> <p>4 Bossetti about Halloween?</p> <p>5 A. No. 12:22:56</p> <p>6 Q. I believe you testified that you</p> <p>7 reviewed their statements -- strike that.</p> <p>8 Did you ever review their</p> <p>9 statements that they gave in connection with</p> <p>10 this case? 12:23:03</p> <p>11 MR. WELCH: Objection. Asked and</p> <p>12 answered. You can answer again.</p> <p>13 A. Yes.</p> <p>14 Q. That was the next season?</p> <p>15 A. Yes. 12:23:07</p> <p>16 Q. So I assume that their statements</p> <p>17 had no effect on your conclusion that you</p> <p>18 reached that Gary Bossetti had acted properly?</p> <p>19 MR. WELCH: Objection to the form.</p> <p>20 You can answer. 12:23:27</p> <p>21 A. No.</p> <p>22 Q. Do you know where the Bossetti's</p> <p>23 slept that night?</p> <p>24 A. No.</p> <p>25 Q. Do you know what time Gary 12:23:35</p>
<p style="text-align: right;">Page 434</p> <p>1 Cherry</p> <p>2 A. No.</p> <p>3 Q. Were there any statements that you</p> <p>4 tried to get that you couldn't?</p> <p>5 A. No. 12:22:16</p> <p>6 Q. Were there any witnesses that you</p> <p>7 thought would be important to get that you</p> <p>8 didn't take?</p> <p>9 A. No.</p> <p>10 Q. How come you didn't interview Gary 12:22:24</p> <p>11 Bossetti as part of your role in the</p> <p>12 investigation of the incident?</p> <p>13 MR. WELCH: Objection. Asked and</p> <p>14 answered. You can answer again.</p> <p>15 A. I didn't feel that was my 12:22:34</p> <p>16 function. It should be a supervisor</p> <p>17 interviewing the police officer.</p> <p>18 Q. Do you know when he was</p> <p>19 investigated as part of the investigation?</p> <p>20 A. No. 12:22:47</p> <p>21 Q. Do you know whether he was</p> <p>22 drinking that night?</p> <p>23 A. I don't know.</p> <p>24 Q. Did you ever speak with Gary</p> <p>25 Bossetti about Halloween? 12:22:51</p>	<p style="text-align: right;">Page 436</p> <p>1 Cherry</p> <p>2 Bossetti left the island that night?</p> <p>3 A. I don't know. I wasn't there.</p> <p>4 Q. Do you know how Gary Bossetti got</p> <p>5 off the island? 12:23:50</p> <p>6 A. No.</p> <p>7 Q. Have you ever seen the statements</p> <p>8 that were provided by any of the on duty</p> <p>9 officers that night?</p> <p>10 A. Yes. 12:24:05</p> <p>11 Q. When did you see those statements?</p> <p>12 A. Again early in the '05 season.</p> <p>13 Q. So you had not seen them at all in</p> <p>14 2004?</p> <p>15 A. No. 12:24:14</p> <p>16 Q. And they didn't have any effect on</p> <p>17 your conclusion that you reached?</p> <p>18 A. No.</p> <p>19 Q. Did you try to speak with any of</p> <p>20 them as part of your investigation? 12:24:29</p> <p>21 A. No.</p> <p>22 Q. Do you think it would have been</p> <p>23 important to speak with the three of them or</p> <p>24 any of the three of them as part of your</p> <p>25 investigation? 12:24:36</p>

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1 **Cherry**
 2 **MR. WELCH:** Objection. You can
 3 answer.
 4 A. No, that wasn't -- I don't believe
 5 that was my job to do, I believe the 12:24:41
 6 supervisor should be the person who
 7 interviewed them.
 8 **Q. Have you ever spoken with any of**
 9 **the three officers that were on duty that**
 10 **night about Halloween?** 12:24:57
 11 A. I believe we -- there was a
 12 question as to whether there was a cover-up
 13 involved, and I believe we asked them if they
 14 wanted to look at the file, come in and look
 15 at it and if they had any questions they could 12:25:10
 16 ask us. And I believe I was there when each
 17 of them looked through the file and read the
 18 statements.
 19 **Q. Let's go back to what you said.**
 20 **What was the first question of a cover-up?** 12:25:22
 21 A. I heard someone, I believe George
 22 Hesse mention that they were complaining that
 23 we covered up a brutality case, and I said the
 24 facts are there, I said show them the file,
 25 let them read the file. I didn't know if 12:25:39

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1 **Cherry**
 2 anybody had showed them the file or they read
 3 it or not. I said let them read the file and
 4 see what we discovered.
 5 **Q. Did George Hesse actually tell you 12:25:50**
 6 **that the three of them complained to him that**
 7 **they believed there was a cover-up?**
 8 A. No.
 9 **Q. How did you find that out?**
 10 A. George told me. He said I heard 12:25:56
 11 that they think this is a cover-up, that we
 12 are trying to cover up something.
 13 **Q. When was this?**
 14 A. Sometime in the, I believe in the
 15 '05 -- the '05 season. 12:26:08
 16 **Q. So at some point in the '05 season**
 17 **you learned that the three on duty officers**
 18 **that night believed that you guys were**
 19 **covering up an incident of police brutality?**
 20 A. Yes. 12:26:21
 21 **Q. And George Hesse told you that?**
 22 **MR. WELCH:** Objection.. You can
 23 answer.
 24 A. I believe so.
 25 **Q. Did you ever speak to George Hesse 12:26:28**

1 **Cherry**
 2 **about that allegation?**
 3 A. Other than when he first told me,
 4 I said there was no cover up, I said the facts
 5 are all there. You know, self-explanatory. I 12:26:41
 6 said let them read the file. That was, you
 7 know, I was kind of upset that they thought
 8 that I would cover up something.
 9 **Q. Do you know why they believed you**
 10 **covered something up?** 12:26:57
 11 A. I don't know.
 12 **Q. Did you ever speak to them about**
 13 **it?**
 14 A. No.
 15 **Q. I go back to the question I asked 12:27:02**
 16 **before. Had you ever spoken to any of the**
 17 **three officers that were on duty that night**
 18 **about the Halloween incident?**
 19 **MR. WELCH:** Objection. Asked and
 20 answered. You can answer again. 12:27:10
 21 A. Just when we asked them to look at
 22 the file I was there, if they had a question
 23 they could ask me.
 24 **Q. Did they ask you any questions?**
 25 A. Not that I recall. 12:27:19

1 **Cherry**
 2 **Q. Did you say anything to them?**
 3 A. I said the file is here, read the
 4 file. They read the file and there was no
 5 questions. They didn't ask me what happened, 12:27:30
 6 why did I feel this way about the case. I
 7 said this is what happened.
 8 **Q. What do you recall if anything --**
 9 **what's the substance if you recall of any**
 10 **conversation that you ever had with Frank 12:27:51**
 11 **Fiorillo about Halloween?**
 12 A. I don't recall other than asking
 13 him to review the file, having any
 14 conversation with him about it.
 15 **Q. You actually asked him to review 12:28:00**
 16 **the file?**
 17 A. I said the file is here, I asked
 18 him to come in and read the file.
 19 **Q. Did he come in by himself or with**
 20 **other people?** 12:28:10
 21 A. I don't know. I think they each
 22 came in individually to read it. I don't
 23 think they came together.
 24 **Q. Who was in the room with**
 25 **Mr. Fiorilli when he reviewed the file?** 12:28:14

1 Cherry

2 A. I don't recall. I believe I was,
3 but I don't recall who was in the room. It is
4 a small office, people are in and all out the
5 time. So there may have been, there may not 12:28:31
6 have been other people.

7 Q. You don't recall other than saying
8 here is the file anything else that was
9 discussed between the two of you?

10 A. No. 12:28:33

11 Q. How about Mr. Lamm, what do you
12 recall speaking with him, the substance of
13 what you spoke with him about the Halloween
14 incident?

15 A. Other than having them review the 12:28:40
16 file I don't recall any conversations that we
17 had about -- there was no questions, no
18 questions about -- they had an opportunity to
19 ask me if I was there or at any time ask me
20 questions about. I never received any 12:28:58
21 questions.

22 Q. Did you ever ask any of them why
23 they believed there was a cover-up?

24 A. No.

25 Q. Do you recall the substance of any 12:29:04

1 Cherry

2 conversation you had with Tom Snyder about the
3 Halloween incident?

4 A. No.

5 Q. Did there come a point in time 12:29:11
6 that Gary Bossetti was terminated over the
7 Halloween incident?

8 MR. WELCH: Objection. You can
9 answer.

10 A. I don't -- I don't know from 12:29:26
11 direct knowledge, but I understand the chief
12 had terminated him.

13 Q. How did you learn that?

14 A. George Hesse told me when he
15 called me, telephone. 12:29:38

16 Q. So you had known that he had been
17 terminated prior to your taking the witness
18 statements?

19 A. Yes.

20 Q. Were you friends with Gary 12:29:45
21 Bossetti?

22 A. We worked together, we were casual
23 friends. We didn't socialize or anything,
24 just from working.

25 Q. You never socialized with him 12:29:57

1 Cherry

2 after a shift?

3 A. I may have had a drink with him
4 once or twice, but other than that, no.

5 Q. Did you ever go to any meals with 12:30:06
6 him either on or off duty?

7 A. No. On duty we sat down and had
8 dinner a couple of times.

9 Q. What was your reaction when you
10 heard that Gary Bossetti had been terminated? 12:30:16

11 MR. WELCH: Objection. You can
12 answer.

13 A. I was surprised. I said why, I
14 asked George. He said apparently he has been
15 accused of assaulting three people in a bar. 12:30:29

16 Q. Did you have any response to that?

17 A. I said that doesn't sound like
18 Gary. I said why, what happened, George said
19 I don't know. At that time he didn't know.

20 Q. Was part of your goal in the 12:30:42
21 investigation to get Gary Bossetti's job back?

22 A. No.

23 Q. George Hesse didn't tell you we
24 need to get Gary's job back?

25 A. No. 12:30:55

1 Cherry

2 Q. Are you sure about that?

3 A. Yes.

4 MR. WELCH: Objection. The
5 testimony speaks for itself. 12:30:59

6 Q. There came a point in time where
7 Mr. Van Koot was arrested over the Halloween
8 incident; is that correct?

9 A. Yes.

10 Q. Do you know who arrested him? 12:31:11

11 A. I believe Gary Bossetti was the
12 arresting officer.

13 Q. So let me just get this straight.
14 There was an incident where he alleges that an
15 off duty police officer assaulted him, and the 12:31:21
16 same off duty police officer was sent out to
17 arrest him; is that correct?

18 MR. WELCH: Objection.

19 A. I don't believe he was sent out.
20 I believe they issued a summons, a notice to 12:31:33
21 appear and he surrendered with his attorney
22 and at that point he was arrested by I believe
23 Gary Bossetti. I wasn't there at the time.

24 Q. Did you attend the court
25 appearance? 12:31:48

Page 445	Page 447
<p>1 Cherry</p> <p>2 A. No, sir.</p> <p>3 Q. Have you ever spoken with anyone</p> <p>4 at the District Attorney's office about the</p> <p>5 Halloween incident? 12:31:56</p> <p>6 A. No.</p> <p>7 Q. Have you ever been contacted by</p> <p>8 anyone at the District Attorney's office about</p> <p>9 the Halloween incident?</p> <p>10 A. No. 12:32:02</p> <p>11 Q. Did you go into Houser's as part</p> <p>12 of your investigation?</p> <p>13 A. Yes.</p> <p>14 Q. Why did you go there as part of</p> <p>15 your investigation? 12:32:26</p> <p>16 A. I had never been in Houser's, so I</p> <p>17 wanted to in and see what it looked like.</p> <p>18 Q. Did you speak with the bartender</p> <p>19 as part of your investigation?</p> <p>20 A. I didn't, no. 12:32:35</p> <p>21 Q. Do you know if anyone did?</p> <p>22 A. I believe George spoke to someone</p> <p>23 there that day. There was only one person in</p> <p>24 the bar at the time cleaning up to close the</p> <p>25 bar, I believe George spoke to him. 12:32:46</p>	<p>1 Cherry</p> <p>2 A. Okay.</p> <p>3 Q. One page exhibit bearing Bates</p> <p>4 2662?</p> <p>5 A. Okay. 12:34:19</p> <p>6 Q. Have you ever seen the document</p> <p>7 marked as Cherry 21?</p> <p>8 A. I believe I have, yes.</p> <p>9 Q. What is this document?</p> <p>10 A. It is a letter advising members 12:34:25</p> <p>11 about the annual department meeting to be held</p> <p>12 in this case on April 2nd, at noon, 1200</p> <p>13 hours.</p> <p>14 Q. Did you receive a copy of this</p> <p>15 memo prior to the meeting? 12:34:43</p> <p>16 A. I believe so, yes.</p> <p>17 Q. How did you get a copy of it?</p> <p>18 A. By mail.</p> <p>19 Q. Was it standard practice to send a</p> <p>20 letter like this announcing the preseason 12:34:52</p> <p>21 meeting?</p> <p>22 MR. WELCH: Objection. You can</p> <p>23 answer.</p> <p>24 A. I believe so, yes.</p> <p>25 Q. Prior to -- strike that. 12:35:00</p>
Page 446	Page 448
<p>1 Cherry</p> <p>2 Q. You testified last time about the</p> <p>3 preseason meetings that the department would</p> <p>4 have; is that correct?</p> <p>5 A. Yes. 12:32:57</p> <p>6 Q. How were you alerted to the</p> <p>7 meetings?</p> <p>8 A. A letter.</p> <p>9 MR. GOODSTADT: Would you mark</p> <p>10 this document as Cherry Exhibit 21, 12:33:08</p> <p>11 document numbered 002662.</p> <p>12 (Cherry Exhibit 21, document</p> <p>13 numbered 002662, marked for</p> <p>14 identification, as of this date.)</p> <p>15 Q. Did you take pictures at Houser's 12:33:49</p> <p>16 Bar?</p> <p>17 A. Yes.</p> <p>18 Q. Why did you do that?</p> <p>19 A. I think George took the pictures,</p> <p>20 because there were pictures taken. 12:33:56</p> <p>21 Q. How come you took pictures?</p> <p>22 A. Just to have a record of what the</p> <p>23 area looked like. It is a very small area.</p> <p>24 Q. Now, I focus your attention on</p> <p>25 what has been marked as Cherry 21. 12:34:11</p>	<p>1 Cherry</p> <p>2 Did you actually attend the</p> <p>3 meeting?</p> <p>4 A. Yes.</p> <p>5 Q. This is the one that you testified 12:35:10</p> <p>6 to last time that George Hesse ran the</p> <p>7 meeting?</p> <p>8 MR. WELCH: Objection. I don't</p> <p>9 believe that was the testimony, but you</p> <p>10 can answer. 12:35:18</p> <p>11 MR. GOODSTADT: I think he said</p> <p>12 the meeting in 2006 was run by George</p> <p>13 Hesse. In fact I am pretty sure he did.</p> <p>14 A. I don't recall that, but I believe</p> <p>15 he did run the meeting. 12:35:26</p> <p>16 Q. Prior to the meeting did you speak</p> <p>17 with George Hesse about what was going to</p> <p>18 happen at the meeting?</p> <p>19 A. No.</p> <p>20 Q. Did you speak to George Hesse at 12:35:34</p> <p>21 all about staffing issues prior to meeting?</p> <p>22 A. No.</p> <p>23 Q. Did you know that the five</p> <p>24 plaintiffs in this case were going to be</p> <p>25 terminated prior to that meeting? 12:35:46</p>

<p style="text-align: right;">Page 449</p> <p>1 Cherry</p> <p>2 A. No.</p> <p>3 Q. When did you learn that the five</p> <p>4 plaintiffs in this case were terminated at</p> <p>5 Ocean Beach? 12:35:55</p> <p>6 A. We were waiting outside for the</p> <p>7 meeting to start and they were called in</p> <p>8 first, you know, go into the office and when</p> <p>9 they came out they advised, advised us that</p> <p>10 they were being terminated. 12:36:12</p> <p>11 Q. Who advised you?</p> <p>12 A.. I don't recall who told me, but I</p> <p>13 found out that they were being terminated.</p> <p>14 Q. You don't recall how you learned</p> <p>15 that they were being terminated? 12:36:23</p> <p>16 A. Somebody told me.</p> <p>17 Q. Did you learn before the meeting</p> <p>18 started or did you learn while you were</p> <p>19 standing out there waiting?</p> <p>20 A. Before the meeting started while 12:36:30</p> <p>21 we were outside waiting.</p> <p>22 Q. Did George Hesse tell you that</p> <p>23 they were being terminated?</p> <p>24 A. No.</p> <p>25 Q. Did you hear the reason as to why 12:36:37</p>	<p style="text-align: right;">Page 451</p> <p>1 Cherry</p> <p>2 Q. Did anyone actually advise you</p> <p>3 that performance was the reason that they were</p> <p>4 let go?</p> <p>5 A. Not that I can recall. 12:37:26</p> <p>6 Q. So sitting here today your belief</p> <p>7 that it was performance related was just</p> <p>8 conjecture?</p> <p>9 A. Yes.</p> <p>10 Q. Did you ever discuss with George 12:37:42</p> <p>11 Hesse why he let the five of them go?</p> <p>12 A. No.</p> <p>13 Q.. Did you ever discuss with Chief</p> <p>14 Paradiso why the five of them were let go?</p> <p>15 MR. WELCH: Objection to the form. 12:37:53</p> <p>16 A. No.</p> <p>17 Q. Now, this memo that is marked as</p> <p>18 Cherry Exhibit 21 instructs you -- strike</p> <p>19 that. It says all officers are required to</p> <p>20 bring all issued equipment with them for 12:38:07</p> <p>21 inspect. Do you see that?</p> <p>22 A. Yes, I do.</p> <p>23 Q. Does that refer to you as an</p> <p>24 officer?</p> <p>25 A. I was not an officer at the time, 12:38:13</p>
<p style="text-align: right;">Page 450</p> <p>1 Cherry</p> <p>2 they were being terminated?</p> <p>3 A. No.</p> <p>4 Q. Sitting here today do you know the</p> <p>5 reason why they were told they were 12:36:43</p> <p>6 terminated?</p> <p>7 A. I guess it was performance issues.</p> <p>8 Q. What is the basis of that?</p> <p>9 A. Just my, from what I can -- you</p> <p>10 know, what I thought. 12:36:54</p> <p>11 Q. What was the basis of your</p> <p>12 thinking that?</p> <p>13 A. I don't know what other reason</p> <p>14 there could be?</p> <p>15 Q. Well, did you review any 12:37:02</p> <p>16 performance issues?</p> <p>17 MR. WELCH: Objection. Asked and</p> <p>18 answered at the previous deposition.</p> <p>19 A. No.</p> <p>20 Q. Did anyone ever advise of you any 12:37:12</p> <p>21 performance problems with any of the five</p> <p>22 plaintiffs?</p> <p>23 A. Advised me?</p> <p>24 Q. Yes.</p> <p>25 A. No. 12:37:21</p>	<p style="text-align: right;">Page 452</p> <p>1 Cherry</p> <p>2 I was a dispatcher.</p> <p>3 Q. So you didn't bring any equipment</p> <p>4 with you for inspection?</p> <p>5 A. I brought my shield and my ID 12:38:19</p> <p>6 card.</p> <p>7 MR. WELCH: The seven hours is up</p> <p>8 now. How much time do you think in</p> <p>9 addition to that you would need.</p> <p>10 MR. GOODSTADT: I should be done 12:38:35</p> <p>11 in 15 or 20 minutes. Not that much left.</p> <p>12 MR. WELCH: Okay.</p> <p>13 Q. It says here on line 4, it says</p> <p>14 new ID will be issued to all. Do you see</p> <p>15 that? 12:38:49</p> <p>16 A. Okay.</p> <p>17 Q. Was new ID issued to you at that</p> <p>18 meeting?</p> <p>19 A. I don't recall. Possibly, but I</p> <p>20 don't recall. 12:39:16</p> <p>21 Q. What does your ID from Ocean Beach</p> <p>22 say; does it have your title on it?</p> <p>23 A. Yes.</p> <p>24 Q. What does it say?</p> <p>25 A. Dispatcher. 12:39:23</p>

<p style="text-align: right;">Page 453</p> <p>1 Cherry</p> <p>2 Q. Did you ever an ID that said</p> <p>3 police officer?</p> <p>4 A. Yes.</p> <p>5 Q. When did you turn that in? 12:39:27</p> <p>6 A. When I resigned.</p> <p>7 Q. Where was the actual meeting held?</p> <p>8 A. In the boat house which is next to</p> <p>9 the ferry terminal.</p> <p>10 Q. Who attended the meeting? 12:39:39</p> <p>11 A. All the officers that were able to</p> <p>12 attend. I don't know exactly how many that</p> <p>13 showed up, but the officers that came attended</p> <p>14 the meeting.</p> <p>15 Q. Do you know who Chris Moran is? 12:39:54</p> <p>16 A. Yes.</p> <p>17 Q. Was Mr. Moran at that meeting?</p> <p>18 A. I don't know for sure.</p> <p>19 Q. You don't recall one way or the</p> <p>20 other? 12:40:00</p> <p>21 A. No.</p> <p>22 Q. Did Mr.. Hesse address at that</p> <p>23 meeting the fact that he had just terminated</p> <p>24 some officers?</p> <p>25 A. I believe he mentioned it, yes. 12:40:08</p>	<p style="text-align: right;">Page 455</p> <p>1 Cherry</p> <p>2 wasn't.</p> <p>3 Q. Did Mr. Hesse tell you, strike</p> <p>4 that.</p> <p>5 Did Mr. Hesse discuss anything 12:41:02</p> <p>6 other than his saying there were certain</p> <p>7 people that were not coming back, did he say</p> <p>8 anything else about the five police officers</p> <p>9 who are plaintiffs in this case?</p> <p>10 A. Not that I can recall. 12:41:14</p> <p>11 Q. Did he mention the names of the</p> <p>12 people that were not coming back?</p> <p>13 A. Not that I recall.</p> <p>14 Q. Isn't it true that he said that Ed</p> <p>15 Carter and Tom Snyder were being fired because 12:41:25</p> <p>16 they were going to wear a wire for the DA?</p> <p>17 MR. WELCH: Objection to the form.</p> <p>18 A. I don't recall that.</p> <p>19 Q. Is there anything that would</p> <p>20 refresh your recollection? 12:41:39</p> <p>21 A. No.</p> <p>22 Q. Do you recall Mr. Hesse saying</p> <p>23 anything about the DA at that meeting?</p> <p>24 A. I don't remember.</p> <p>25 Q. You don't recall him saying 12:41:47</p>
<p style="text-align: right;">Page 454</p> <p>1 Cherry</p> <p>2 Q. What did he say about that?</p> <p>3 A. I don't recall the exact words.</p> <p>4 Q. Sum and substance what did he say?</p> <p>5 A. That some people were not coming 12:40:15</p> <p>6 back.</p> <p>7 Q. What did he say about that; did he</p> <p>8 give any explanation as to why?</p> <p>9 A.. Not that I can recall.</p> <p>10 Q. Did he say who wasn't coming back? 12:40:23</p> <p>11 A. No, but by that time we had known</p> <p>12 who was not coming back, the five officers</p> <p>13 that were not coming back.</p> <p>14 Q. How did you know that?</p> <p>15 A. Because they gathered around -- 12:40:34</p> <p>16 they came out and told me they were not coming</p> <p>17 back.</p> <p>18 Q. At that point in time did you know</p> <p>19 that Tom Snyder was being let go?</p> <p>20 A. I found out the five people who 12:40:44</p> <p>21 were being let go, yes.</p> <p>22 Q. So that day you found out that Tom</p> <p>23 Snyder was being let go?</p> <p>24 A. To the best of my recollection.</p> <p>25 As I said I don't recall who was there and who 12:40:54</p>	<p style="text-align: right;">Page 456</p> <p>1 Cherry</p> <p>2 something about Arnold Hardman's (phonetic)</p> <p>3 attorney telling him that Snyder and Carter</p> <p>4 were going to wear a wire in connection with</p> <p>5 the Gilbred incident? 12:41:58</p> <p>6 MR. WELCH: Objection to the form.</p> <p>7 You can answer.</p> <p>8 A. No, I don't.</p> <p>9 Q. Do you remember him saying</p> <p>10 anything at all about Arnold Hardman's 12:42:04</p> <p>11 attorney?</p> <p>12 A. No.</p> <p>13 Q. Did you ever speak with Arnold</p> <p>14 Hardman about any of the five plaintiffs in</p> <p>15 this case? 12:42:11</p> <p>16 A. No.</p> <p>17 Q. Anyone ask any questions as to why</p> <p>18 the five officers were let go that day?</p> <p>19 A. I don't believe so.</p> <p>20 Q. Did you speak with any other 12:42:25</p> <p>21 officers that were there -- strike that.</p> <p>22 Did you speak with any other</p> <p>23 people who were there about the fact that some</p> <p>24 officers had been terminated?</p> <p>25 A. Other than the surprise, no, that 12:42:37</p>

1 Cherry
2 they were let go. We may have discussed it
3 with somebody what happened, what is going on.
4 I don't recall a specific conversation I had
5 with anybody about it other than general 12:42:52
6 conversation that, you know, surprise that
7 this happened.

8 **Q. Do you recall the sum and**
9 **substance of any of that general conversation?**

10 A. As I said it was a surprise of 12:43:02
11 what was going on.

12 **Q. Who expressed surprise?**

13 A. I did myself, you know, everybody
14 was surprised or, you know, just became aware
15 of it and we were -- it was a surprise to us. 12:43:16

16 **Q. Why were you surprised?**

17 A. Because, you know, it happened.

18 **Q. You had no knowledge that it was**
19 **going to happen prior to that day?**

20 A. No, sir. 12:43:29

21 MR. WELCH: Objection. Asked and
22 answered. You can answer.

23 **Q. Were there any officers hired,**
24 **newly hired officers for that season?**

25 A. I don't recall. 12:43:38

1 Cherry
2 **Q. Isn't it true that Hesse called at**
3 **least some of the plaintiffs in this case rats**
4 **at that meeting?**

5 MR. WELCH: Objection. Form. 12:43:54
6 Foundation. You can answer.

7 A. I don't recall.

8 **Q. You don't recall one way or the**
9 **other?**

10 A. No. 12:43:59

11 **Q. Was there any discussion of any**
12 **budget cuts occurring that year at that**
13 **meeting?**

14 A. Not that I know of.

15 **Q. Have you ever heard, sitting here 12:44:13**
16 **today have you ever heard that there were any**
17 **budget cuts for that season?**

18 A. Not that I recall, no.

19 **Q. This is the first year that Hesse**
20 **was the senior officer in the village; is that 12:44:33**
21 **correct?**

22 MR. WELCH: Objection to the form.
23 Foundation. You can answer.

24 A. I don't recall George's status. I
25 know -- I am not sure when the exact date 12:44:57

1 Cherry
2 Chief Paradiso went on sick leave.

3 **Q. But it was after Paradiso went on**
4 **sick leave that Mr. Hesse became the superior**
5 **officer in the village? 12:45:01**

6 A. Well, he was the sergeant, so if
7 the chief is on sick leave he was the only
8 other supervisor..

9 **Q. Paul Trosko, do you recall him**
10 **being hired as a full-time officer that year? 12:45:13**

11 A. I am not sure the exact date Paul
12 was hired as a full-time officer.

13 **Q. How about Francis Foti, do you**
14 **recall him being hired as a full-time officer**
15 **that year? 12:45:23**

16 A. I am not sure of the exact date
17 that he was hired.

18 **Q. Is George Hesse currently on**
19 **modified duty?**

20 A. I believe so, yes. 12:45:32

21 **Q. Does he carry a weapon?**

22 A. I don't think so.

23 **Q. Does he wear a uniform?**

24 A. Yes.

25 **Q. Same police uniform he has always 12:45:41**

1 Cherry
2 **worn?**

3 A. Not the same uniform. He wears
4 Khaki pants and a blue shirt.

5 **Q. What does that signify? 12:45:55**

6 A. That is just what he wears.

7 **Q. When did he start wearing that**
8 **uniform?**

9 A. Last year. Last season.

10 **Q. The blue shirt, that is an Ocean 12:46:07**
11 **Beach Police Department shirt?**

12 A. He wore a blue shirt with a shield
13 on it. Then there came a point where he just
14 wore a blue shirt without the shield on it.

15 **Q. When did that happen? 12:46:28**

16 A. Sometime during the season last
17 year.

18 **Q. During the '08 season?**

19 A. Yes, to the best of my
20 recollection. I don't remember exactly when 12:46:35
21 he switched.

22 **Q. When was the last time that you**
23 **saw George Hesse?**

24 A. Last time I saw him; probably in
25 October. I mean at work or -- 12:46:46

A3442

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1 Cherry
 2 **Q. At any point in time?**
 3 A. I saw him at the Christmas party.
 4 **Q. Where was the Christmas party?**
 5 A. At Portly Villager. 12:46:56
 6 **Q. Who paid for that party?**
 7 A. It was a cash bar.
 8 **Q. No one paid -- no one from the**
 9 **village paid for that party?**
 10 A. Not to my knowledge, no. 12:47:14
 11 **Q. Do you know if anyone else has**
 12 **been placed on modified duty in the last two**
 13 **years at Ocean Beach?**
 14 MR. WELCH: Objection. You can
 15 answer. 12:47:25
 16 A. Not to my knowledge.
 17 **Q. Do you know who Mitch Burns is?**
 18 MR. WELCH: Objection. Asked and
 19 answered. You can answer again.
 20 A. No. 12:47:34
 21 **Q. Have you ever been to a Christmas**
 22 **party for the Ocean Beach Police Department at**
 23 **the Argyle Grill in Babylon?**
 24 A. Yes.
 25 **Q. What year did you go to that? 12:47:47**

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1 Cherry
 2 A. I believe that was the first year
 3 that I was there, maybe the first two years
 4 the Christmas party was there. Then it
 5 switched over to the Portly Villager. 12:47:58
 6 **Q. Do you recall being at the '05**
 7 **Christmas party?**
 8 A. Yes.
 9 **Q. Do you know who paid for that**
 10 **party? 12:48:10**
 11 A. No.
 12 **Q. Is it true that the PBA paid for**
 13 **that party?**
 14 MR. WELCH: Objection.
 15 A. I don't know for sure. 12:48:14
 16 **Q. Did you have to pay for that**
 17 **party?**
 18 A. I don't recall if that was a cash
 19 bar or not.
 20 **Q. Have you ever reviewed any blogs 12:48:21**
 21 **in connection with the Ocean Beach Police**
 22 **Department?**
 23 A. Yes, there was a blog that
 24 contained an Ocean Beach Police Department
 25 blog. 12:48:43

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1 Cherry
 2 **Q. What was the web-site that blog**
 3 **was on?**
 4 A. I am trying to think of the name
 5 of it. The Schwartz Report or something like 12:48:50
 6 that.
 7 **Q. When did you first review that?**
 8 A. It had been going on for I guess a
 9 year or so, nothing recently, but I know the
 10 last year or two there was a blog about that, 12:49:08
 11 Ocean Beach.
 12 **Q. When did you first review it?**
 13 A. When it first came on, I don't
 14 know the exact date.
 15 **Q. Where did you review it? 12:49:18**
 16 A. On the computer.
 17 **Q. On which computer?**
 18 A. My home computer.
 19 **Q. Did you ever review it at the**
 20 **computer at the police station at Ocean Beach? 12:49:27**
 21 A. I may have once or twice, yes.
 22 **Q. Have you ever posted on the blog?**
 23 A. Yes.
 24 **Q. How many times?**
 25 A. I believe four. 12:49:37

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1 Cherry
 2 **Q. What name do you post on there?**
 3 A. No particular name, I think it is
 4 like 12345.
 5 **Q. That is the name, 12345? 12:49:48**
 6 A. Well, you just go on, you just put
 7 something down to get on the blog.
 8 **Q. What was the -- when did you post**
 9 **on the blog?**
 10 A. The exact -- I can give you the 12:49:59
 11 exact dates if you want them.
 12 **Q. Can I get the exact dates?**
 13 MR. WELCH: You have it written
 14 down; you want to leave a space?
 15 A. Yes. I thought I had my book with 12:50:07
 16 me, but I don't know.
 17 **Q. Leave a space in the transcript**
 18 **for that.**
 19 TO BE FURNISHED: _____
 20 _____ 12:50:13
 21 _____
 22 A. I believe I posted four times.. I
 23 don't have the exact dates and times.
 24 **Q. Why did you post on the blog?**
 25 A. Because I felt there was some -- a 12:50:21